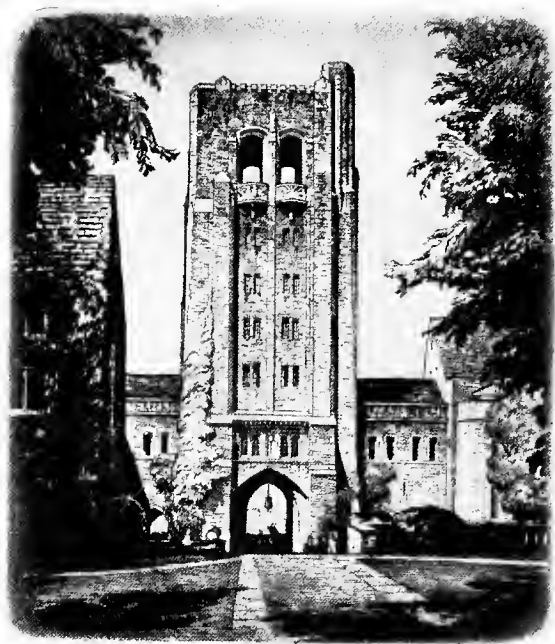


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A DIGEST  
OF THE  
DECISIONS

IN THE OFFICE OF THE  
SECOND COMPTROLLER OF THE TREASURY,

COMPILED UNDER THE DIRECTION OF  
THE COMPTROLLER,

BY  
GEORGE CHIPMAN.



WASHINGTON:  
GIDEON AND CO., PRINTERS.  
1853.



## PREFACE.

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The decisions in the office of the Second Comptroller of the Treasury, which have accumulated since its institution in 1817, have been preserved in such a manner as to place them almost beyond the reach of reference. The majority of them are contained in manuscript volumes, interspersed among the routine correspondence of the office, and without any index, either of cases or subjects; while a considerable portion exist only among the original papers upon which they were made.

Some method of rendering these decisions available to those interested in the business of the office has long been desired. And it is believed that the present compilation will be found so far convenient and correct as to become useful, not only to those engaged in this and the other offices of the Government, but to the large number of officers and claimants whose accounts and claims are here finally disposed of.

An effort has been made to give in every instance, a full and correct note of the points decided, with a reference which will facilitate recurrence to the original opinions. Those decisions which have been overruled, or have become obsolete, are omitted. Many not now in force, owing to changes in statutes or regulations, are nevertheless retained, because applicable to cotemporary claims which are liable to arise.

The decisions extending from March, 1817, to March, 1829, and contained in Vols. 1 and 2, were made by Mr. RICHARD CUTTS. Those from March, 1829, to May, 1830, and contained in Vol. 3, by Mr. ISAAC HILL. Those from May, 1830, to August, 1836, and contained in Vols. 4 and 5, by Mr. JAMES B. THORNTON. Those from August, 1836, to July, 1850, and embraced in Vols. 6 to 13, inclusive, by Mr. ALBION K. PARRIS. Those from July, 1850, to October, 1852, and contained in Vol. 14, by Mr. HILAND HALL. And those since October 1st, 1852, and contained in Vol. 15, by the present Comptroller, EDWARD J. PHELPS.

Many valuable references have been kindly furnished from the very full and correct notes of Mr. J. M. BRODHEAD. And similar assistance has also been received from other gentlemen employed in the office, particularly Messrs. ABBOTT, PURRINGTON, EVANS, and CATHCART.

E. J. P.

*February 1, 1853.*

## INDEX.



	Page.
ARMY.....	1
INDIANS .....	57
MISCELLANEOUS SUBJECTS .....	62
MARINE CORPS.....	91
NAVY.....	99
PENSIONS .....	124

*The Chapters under the foregoing titles are arranged in the alphabetical order of their subjects.*



# A R M Y .

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## AIDS-DE-CAMP.

1. Under the various laws of Congress in relation to the subject, aids-de-camp are not entitled to more than four rations per day.—*Vol. 11, pp. 311, 427.*

2. An aid-de-camp to a Major General is not entitled to the additional ration given to subalterns, by the act of April 24, 1816. The proviso in the 12th section does not apply to aids-de-camp.—*Vol. 14, p. 474.*

3. An aid-de-camp to a Major General is not considered as having a command, within the meaning of the 1st section of the act of April 16, 1818, authorizing brevet pay. *Vol. 12, p. 129.*

4. Under the law of January 11, 1812, an aid-de-camp to a Major General is entitled to \$24 per month in addition to his pay in the line; but that law does not authorize an allowance to aids-de-camp of forage and rations, in addition to what they receive as officers of the line.—*Lieut. Kearney's case, April 11, 1844.*

5. In accordance with the opinion of the Attorney General, of 28 April, 1834, Brevet Major Generals have not the power to appoint more than one aid-de-camp.—*Vol. 5, p. 327.*

[*See par. 219.*]

## CLERKS.

6. Clerks of commissaries and quartermasters are not entitled to a commission for making sale of public property at auction, in addition to their monthly pay.—*Dec. Sec. Compt., April 9, 1849.*

7. By the construction which has been given to the act of August 23, 1842, clerks in the Commissary Department are not entitled to receive other allowance for any service than their regular wages as clerks.—*Vol. 14, p. 182.*

8. The compensation to which a non-commissioned officer, employed as a clerk to a paymaster, is entitled under the 3d section of the act of April 24, 1816, is double the pay to which he was entitled as non-commissioned officer, and no more.—*Vol. 8, p. 506.*

9. The employment of civilians as clerks in the office of the Assistant Adjutant General is not authorized by regulation.—*Vol. 12, p. 113.*

10. There is no authority given by the Ordnance Regulation, or by the War Department, for the employment of citizen clerks at arsenals, except at Watervliet, Pittsburgh, and Washington city. When the business of an arsenal is such as to require the employment of a clerk, a soldier must be assigned with his own consent, upon an allowance as upon extra duty.—*Vol. 5, p. 323.*

[*See par. 154, 159, 188, 202, 204, 205, 206.*]

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CLOTHING.

11. When a soldier has drawn clothing in advance, but not more than he was entitled to at the time of issue,

and is subsequently discharged under circumstances in which no fault can be imputed to him, no deduction should be made on account of the clothing received.—*Dec. Sec. Compt., May, 1850.*

12. A private soldier who, previous to receiving his allowance of clothing, receives and accepts a commission in the army, is not entitled to his clothing.—*Dec. Sec. Compt., Oct. 31, 1846.*

13. The allowance to the volunteer for clothing, under the 9th section of the act of June 18, 1846, chapter 28, is \$3 50 per month, during the time he shall be in the service of the United States.—*Vol. 11, p. 462.*

*See par. 300.]*

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#### COMMISSARY DEPARTMENT.

14. The accidental exercise of his brevet rank does not interfere with the permanent appointment and duty of an assistant commissary of subsistence, for which the officer is entitled to pay.—*Case of Brevet Captain R. A. Arnold, Feb. 16, 1845.*

15. An assistant commissary of subsistence, on furlough, is entitled to the emoluments of his appointment.—*Vol. 6, p. 584.*

16. Under the joint resolution of August 8, 1846, accounting officers cannot allow for more than one officer in the commissary department to a regiment.—*Vol. 13, p. 253.*

*[See par. 90, 91, 159, 160, 161, 164, 219, 239.]*

## CONTRACTORS.

17. Contractors are not, in point of law, entitled to claim for a part performance, compensation as for a full performance of their contract, when the Government interferes to prevent a full performance. But they should be made good for all expenses and losses which are the direct and legitimate consequences of the interference of the Government in the performance of their contract.—*Vol. 14, p. 158.*

18. Where a contract was made to transport a number of horses at a given sum per head, "*to be delivered in good order,*" and a portion of the horses died on the passage, without fault of either party, no freight can be allowed for those that died.—*Vol. 15, p. 228.*

19. A contractor engaged to transport all the army stores that should be required from one post to another, and to receive a stipulated price per ton therefor; troops being ordered to move, the quartermaster, by order of the commanding officer of the post, directed the contractor to furnish at the post, at a given time, a certain number of wagons, for the purpose of transporting stores under his contract; the wagons were furnished, but the order for the movement of the troops having been countermanded, no transportation was required; held that the contractor should be repaid his expenses in bringing the train together.—*Vol. 15, p. 2.*

[*See Title "MISCELLANEOUS SUBJECTS," chap. "CONTRACTORS."*]

## COURTS MARTIAL.

20. In all cases of claims for attendance on courts martial or courts of inquiry, the order for holding such court, showing its object, must be produced; and the accounts for attendance as members or witnesses, showing the dates and times of such attendance, their places of residence, and the distance travelled, must be certified by the recorder or judge advocate.—*Vol. 2, p. 329.*

21. The 20th section of the act of January 11, 1812, provides that a commissioned officer, for attending general courts martial, shall be allowed a reasonable compensation for any extra expense he may incur for travel and attendance, not exceeding \$1.25 per day to officers who are not entitled to forage, and not exceeding \$1 per day to such as are entitled to forage.—*Vol. 5, p. 91.*

22. By the regulations in force in the year 1834, an officer attending a court of inquiry as a member is not entitled to any allowance beyond that of transportation of baggage.—*Vol. 5, p. 31.*

23. The laws of 3 March, 1835, and 3 March, 1839, prohibit a per diem allowance to an officer while travelling to and attending a court martial.—*Vol. 10, p. 315.*

24. Under the laws of 1842, no per diem allowance to officers for attending courts martial, or for any other service, is authorized.—*Vol. 11, p. 191.*

25. No per diem allowance for travelling or attendance, as a member of a court of inquiry, is authorized by law or regulation.—*Vol. 9, p. 176.*

Officers who are members of a court martial held at a post where they are on duty, or leave of absence, are not entitled to any per diem allowance, when no other addi-

tional expense is shown to have been necessarily incurred by them in the discharge of that service.—*Major Lee's case, July, 1852.*

The per diem allowance for attendance on courts martial, to officers entitled to forage, cannot in any case exceed one dollar per day.—*Case of Gen. Towson and al., July, 1852.*

Though members of a court martial entitled under existing laws to a per diem allowance, may receive it as well for the time spent in travelling to and from the court as in actual attendance upon it, yet if the journey, or any part of it, is performed upon other duty, so as to entitle them to transportation at the rate of ten cents per mile, they cannot be allowed the per diem for the time occupied in so travelling.—*Case of Gen. Towson and al., July, 1852.*

26. Officers of the army, for their attendance as witnesses before a naval court martial, in obedience to an order from the War Department, are entitled to such compensation only as they would have been entitled to, if their attendance had been before a military court martial.—*Major Hill's case, August, 1851.*

27. Navy officers attending army courts martial as witnesses, under orders from the Secretary of the Navy, are entitled to navy allowances for travelling and attendance, payable from the army appropriation.—*Dec. Sec. Compt., July, 1852.*

[*See par. 106, 120, 210.*]

## DECEASED SOLDIERS.

28. A payment to the heirs of a deceased soldier, is considered a valid discharge of the claim by the Government. And in case of such payment, a subsequent application by the administrator, in behalf of the creditors, will not be regarded.—*Vol. 14, p. 357.*

29. Money due to a deceased soldier is not to be paid over to an administrator, unless it shall appear that he is an heir of the deceased, or has been appointed at the request of heirs or creditors.—*Vol. 14, p. 58.*

30. Arrearages due a deceased soldier may be paid, without administration, to wife, children, brothers, sisters, father, and mother, in their order; but not to more remote heirs.—*Vol. 15, p. 186.*

31. Payments will not be made to legatees of deceased soldiers under *nuncupative* wills.—*Vol. 14, p. 363.*

32. A soldier cannot, by last will and testament, transfer his right either to extra pay or land; but arrearages of pay may be so transferred.—*Vol. 13, p. 150.*

33. A brother of a deceased soldier inherits the estate to the exclusion of an uncle.—*Vol. 13, p. 216.*

34. Arrears of pay and extra pay may be legally paid to the mother of the deceased soldier, he being an illegitimate son, and leaving neither wife nor child.—*Vol. 13, p. 376.*

[*See par. 78, 168, 169, 176, 177.*]

## DESERTERS.

35. The practice of the Treasury Department is to require an order for the pursuit of deserters before allowing the expenses of such pursuit. This order, emanating from the commanding officer of the post from which the desertion took place, should name the individuals to be apprehended. The actual and necessary expenses must be sworn to by the persons employed in the pursuit.—*Vol. 5, p. 138.*

36. All arrearages due a deserter are forfeited by his desertion.—*Vol. 10, p. 321.*

## DISBURSING OFFICERS.

37. Although, in point of fact, an officer may be charged on the books of the Treasury with the amount of requisitions made in his favor, yet he is not to be held accountable for the money until it shall come to his hands.  
*Vol. 14, p. 192.*

38. The Regulations of the War Department, of 14 March, 1835, take away all right to extra compensation of every kind, for which provision is not made by law. Disbursing officers are, therefore, not entitled to the per diem allowance which they were previously allowed.—*Vol. 11, p. 182.*

39. When a payment is specially directed by the Secretary of War, it should be allowed to the disbursing officer who makes it, though unauthorized by law. But if the officer to whom such payment was made remains in

the service, the amount received should be charged to him.—*Vol. 15, p. 214.*

40. Discount is allowed to a disbursing officer of the army, on bills negotiated by him without the limits of the United States.—*Major Sword's case, March 15, 1845.*

41. No voucher will be admitted in support of a purchase of articles for the use of the army, where the observance of the law of March 3, 1809, has been neglected. *Vol. 9, p. 177.*

42. A quartermaster at Santa Fé drew his draft on the Quartermaster's Department in the form of a set of exchange. The payee was killed by the Indians, and the first of the set of exchange, then on his person, was lost. Held, that the drawer had no right to order the draft to be paid to any other person.—*Vol. 14, p. 17.*

43. Paragraph 1004, of article 69, of the General Regulations, of March 1st, 1825, and paragraph 18, of article 43, of those of Dec. 31st, 1836, require that the Quartermaster General shall decide upon all claims arising under the regulations of his department, and shall transmit the accounts of his subordinates, with his remarks thereon, to the accounting officers.—*Vol. 7, p. 68.*

44. If an original certificate would be paid on presentation to any officer of the Quartermaster's Department, other than the Quartermaster General, such certificate should be surrendered before payment is made on the duplicate.—*Vol. 12, p. 35.*

45. Whenever an account of a disbursing officer is examined by a clerk in the office of the Second Comptroller, and it shall appear that such officer is no longer employed to disburse the public money, and that a balance remains in his hands unaccounted for, it is the duty of the clerk,

by whom such account is examined, to hand to the Comptroller, on a separate paper, the name of such officer, the balance due the United States, if any, according to his own statement, the balance due the United States according to official statement, and such other remarks as the appearance of the account may call for.—*Regulation of Sec. Compt., Dec. 27, 1838.*

46. Regulations of the War Department, made in pursuance of law, are binding as law upon all concerned. *Vol. 11, p. 173.*

[*See Title "MISCELLANEOUS SUBJECTS," chap. "DISBURSING OFFICERS."*]

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#### FORAGE.

47. The proviso of the act of March 3, 1845, chapter 65, limiting the allowance of forage for officers' horses in time of peace, was intended as a permanent provision, and is so to be considered by the accounting officers.—*Vol. 12, p. 275.*

48. To entitle an officer to draw forage in kind, or to commute it in money, it must be made to appear that the horse was kept for the public service, and the certificate must be framed accordingly.—*Vol. 9, p. 625.*

49. Officers of the corps of engineers are not entitled, under the act of July, 1838, to commutation for forage, unless upon certificates that the horses claimed for were actually kept.—*Vol. 9, p. 611.*

50. By the law of March 3, 1845, all forage officers, who are neither general nor field officers, nor officers of dragoons, are to be considered as belonging to the class of

“*Other officers entitled to forage,*” mentioned in the proviso to the third paragraph of the 1st section of the act; and consequently, the officers of the light artillery are entitled to forage for one horse only.—*Vol. 11, p. 130.*

51. Under the act of March 2, 1821, four companies in each regiment of artillery are directed to be equipped as “light artillery.” The officers of these companies are the only artillery officers entitled to forage under the act of Feb. 24, 1812.—*Vol. 10, p. 447.*

52. Officers of the light artillery are not entitled to compensation for forage, except when their companies are actually mounted.—*Vol. 15, p. 382.*

53. Paymasters, surgeons, and assistant surgeons, are entitled under the act of March 2, 1845, to forage for one horse each only, as they are within the denomination of “*other officers entitled to forage,*” specified in the said act.—*Dec. Sec. Compt., July 31, 1845.*

54. Under the opinion of the Attorney General, regimental quartermasters of the dragoons, artillery, infantry, and riflemen respectively, are entitled, under the 4th section of the act approved 11 February, 1847, to the allowance of forage for two horses.—*Vol. 15, p. 25.*

55. A mounted soldier of volunteers or militia, in the service of the United States in the war with Mexico, is entitled to 12½ cents only per day for forage furnished by himself, in conformity with the 2d section of the act of 19 March, 1836, except when travelling from his home to the place of rendezvous, or from the place of his discharge back to his residence, in which cases he is entitled to an allowance for forage of 25 cents per day, by the 10th section of the act of June 18, 1846.—*Dec. of Sec. Compt., June, 1847.*

## HORSES.

56. In order to sustain a claim for a horse lost by abandonment, in consequence of the United States failing to supply sufficient forage, the claimant must adduce the evidence of the officer under whose command he served when the loss occurred.

The rules also require that the evidence should, in case the claimant was remounted after the loss, state when he was remounted, how long he continued so, and explain whether the horse whereon he was remounted had not been furnished by the United States, or been owned by another mounted militia-man or volunteer.—*Vol. 9, pp. 607, 623.*

57. A claimant for property lost in the service of the United States, is required by the Regulations, to produce the testimony of the officer under whose command he was serving when the loss occurred. If that cannot be produced, the next best evidence of which the case is susceptible will be required. The claim cannot be admitted on the testimony of the claimant alone.—*Vol. 10, pp. 172, 195, 379, 465.*

58. Where a claim is made for a horse destroyed or abandoned by order of the commanding officer, it is required that the order therefor of the commanding officer be produced.—*Vol. 9, p. 425.*

59. Under the act of 23 August, 1842, horses shot by order of the commanding officer are embraced within the term "*destroyed.*" And only those shot by unavoidable accident are embraced within the second class of cases mentioned in the act, those "*shot or otherwise lost.*"—*Vol. 9, p. 423.*

60. A claim for a horse turned over to the service of the United States, must be supported by the deposition of the claimant, declaring that he has not received from any officer or agent of the United States any horse, saddle, bridle, or equipments, in lieu of the property so turned over, nor any compensation for the same.—*Vol. 9, pp. 576, 616.*

61. By the rules prescribed by the Secretary of War, to establish a claim for a horse turned over to the service of the United States, the receipt or certificate given for the property by the officer of the United States, to whom the same was delivered, must be produced.—*Vol. 10, p. 235.*

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## HOSPITAL STEWARDS.

62. A soldier who enlists expressly as hospital steward, cannot legally be compelled to perform duty in the ranks as a private soldier. On his discharge, he is entitled to extra pay as hospital steward.—*Wagner's case: March, 1845.*

63. A private soldier, on detached duty as hospital steward, is entitled to the pay of a sergeant; but on his discharge is entitled to the travelling allowances of a private only.—*Vol. 13, p. 20.*

64. Hospital stewards are entitled to double pay under the act of September 28, 1850.—*Vol. 14, pp. 211-12.*

[*See par. 152, 182.*]

## MEDICAL ATTENDANCE.

65. By the Regulations for the Medical Department, *par.* 20, private physicians are to be employed to accompany troops or detachments on a march, or in transports, only by order from the War Department, or in special cases, by order of the officer directing the movement, when the contract must be accompanied with a particular statement of the circumstances which render the employment of a private physician necessary.—*Vol.* 7, *p.* 186.

66. *Par.* No. 1222 of the Army Regulations, limits the allowance to private physicians to a sum not exceeding \$40 per month, in any case, for attending a post, garrison, or detachment. No allowance therefore, beyond that limit can be made, except under the express sanction of the Secretary of War.—*Vol.* 13, *pp.* 245, 58, 109; *Vol.* 11, *p.* 173; *Vol.* 12, *pp.* 140, 183, 211.

67. A private physician may be employed to render medical services at two military posts at the same time, and receive a compensation adapted to the nature and extent of his services.—*Vol.* 12, *p.* 108.

68. The revised recruiting regulations of 1847, *par.* 83, forbid the employment of private physicians for the purpose of examining recruits, without special authority from the Adjutant General.—*Vol.* 13, *pp.* 161, 167.

69. An account for medical attendance and medicines furnished to a military storekeeper, is not chargeable to the United States.—*Vol.* 14, *p.* 250.

70. An account of a private physician, for medical services and medicines, must be sustained by other evidence than his own oath.—*Vol.* 12, *p.* 150.

## MEXICAN WAR.

71. 24 April, 1846, is the time fixed upon as the commencement of the war with Mexico.—*Vol. 14, p. 57.*

72. The term of service of troops enlisted “*during the war*” with Mexico, extends not merely to the termination of hostilities, but till they shall have been regularly mustered out of service.—*Vol. 15, p. 61.*

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## MILITARY ACADEMY.

73. It has been decided by the Attorney General that a soldier employed as an assistant librarian at the Military Academy at West Point, may be paid an allowance of \$10 per month.—*Vol. 15, p. 79.*

74. Officers detailed as instructors in the Military Academy, do not come within the provisions of the law allowing ten dollars per month to the commanders of companies, for duties and responsibilities in respect to the clothing, &c., of the company.—*Vol. 2, p. 302.*

75. The pay of the officers at the Military Academy, provided for by the Appropriation act of March 3, 1851, commenced with the fiscal year for which the appropriation was made, and not at the date of the act.—*Vol. 14, p. 370.*

76. A cadet who leaves the Military Academy upon a forced resignation, is entitled to the same allowances as one who leaves upon a voluntary resignation, and no more.—*Vol. 8, p. 356.*

[*See par. 93.*]

## MILITARY ASYLUM.

77. The act of March 3, 1851, embraces men enlisted for the Ordnance Department. They are therefore to contribute the 25 cents per month to the Military Asylum, in the same manner with enlisted men belonging to other corps of the Army.—*Vol. 14, p. 362.*

78. The stoppage of 25 cents per month, directed by the act of March 3, 1851, for the benefit of the Military Asylum, is not to be made from the arrears due a deceased soldier.—*Dec. Sec. Compt., March 5, 1852.*

## P A Y .

1. OFFICERS' PAY.
2. ALLOWANCE TO COMMANDERS OF COMPANIES.
3. BREVET PAY.
4. STOPPAGE OF PAY.
5. SOLDIERS' PAY.
6. EXTRA DUTY.
7. RETAINED PAY.
8. EXTRA PAY.

*Officers' Pay.*

79. The pay of military officers, commences from the date of their acceptance, they being from that date liable to duty.—*Vol. 11, p. 261; Vol. 8, pp. 95, 248.*

80. The date of the acceptance of an appointment is resorted to, in ordinary cases, to ascertain the time when the service actually commenced. But when the time is

known by other facts, that of acceptance is immaterial.—*Lieut. R. S. Smith's case, June 13, 1842.*

81. A staff appointment conferred on an officer in the line of the army is not a promotion, but an original appointment. Its pay will therefore commence from the date of the officer's acceptance.

Such acceptance may be either by letter or by commencing to perform duty.—*Vol. 15, p. 13.*

82. Performance of duty by an officer is regarded as sufficient evidence of his acceptance of the appointment to which the duty appertains.—*Lieut. W. M. D. McKissack's case, Dec. 17, 1840.*

83. Officers of the army, when suspended under sentence from duty merely, are entitled to their pay and rations.—*Vol. 6, p. 31.*

84. No pay can be allowed after an officer shall have ceased to continue in service.—*Vol. 13, p. 201.*

85. It has become a uniform rule, that when an officer of the Army or Navy is out of service, and is restored by reappointment, he cannot receive pay for the interval, except by act of Congress.—*Vol. 15, p. 394.*

86. By an order of the War Department, dated Sept. 23, 1841, no pay or emoluments can be allowed to officers who may thereafter be restored to rank for the time they may have been out of service.—*Vol. 14, p. 137; Vol. 13, p. 354.*

87. Under the act of 5 July, 1838, the two assistant adjutant generals, having the rank of major, are entitled to cavalry pay, as are also the assistant quartermasters, and the Medical Department. And as cavalry pay is given by this act to the Colonel of Ordnance, the Commissary General, whose pay is, under the act of April 14,

1818, the same with that of the Colonel of Ordnance, becomes also entitled to cavalry pay.—*Vol. 6, p. 569.*

88. An officer acting as Quartermaster General during the absence of that officer from the seat of Government, is not entitled to be paid in that capacity, either under the act of July 4, 1836, or otherwise.—*Vol. 15, p. 307.*

89. When a question arises, whether an officer of the Army did or did not hold a staff appointment during a particular period, the accounting officers must always be governed by the records of the Department to which the appointment belongs. If those records are erroneous, it is the duty of that Department to correct them.—*Vol. 15, p. 429.*

90. Acting assistant commissaries are not entitled to the additional compensation given by the act of April 16, 1818, unless they are subalterns of the line of the Army.

And officers of the Engineers, Topographical Engineers, Ordnance, and the Medical Corps, do not belong to the line of the Army.—*Vol. 15, p. 407.*

91. An officer acting as commissary or quartermaster, is not entitled to the additional compensation therefor when on furlough.—*Vol. 6, p. 545.*

92. But one regimental quartermaster to each regiment raised for the Mexican War can legally be paid.—*Vol. 15, p. 353.*

93. The act of July 20, 1840, equalizing the compensation of the commandants of cadets and the professors of mathematics at the Military Academy, is superseded in this respect by the act of \_\_\_\_\_, which gives to each of these officers \$2,000 per annum, besides the service rations to which they may respectively be entitled.—*Vol. 15, p. 466.*

94. The 2d section of the act of August 23, 1842, chap. 183, expressly prohibits an officer, whose pay and emoluments are fixed by law and regulations, from receiving any additional pay, extra allowances, or compensation, in any form whatever, for the disbursement of the public money, or any other public service or duty, unless the same shall be authorized by law, and the appropriation therefor explicitly sets forth that it is for such additional pay, extra allowance, or compensation.—*Vol. 12, pp. 159, 268.*

95. A lieutenant in the line of the Army was, by proper authority, appointed adjutant, and while in the performance of his duties as such was promoted to a captaincy, to take rank from a date which included a portion of the time during which he performed the duties of adjutant. Held that he was not entitled to the pay of adjutant after the date of his promotion.—*Dec. Sec. Compt., Aug. 19, 1851.*

96. An officer of the Army on duty, and entitled to his pay and emoluments according to his rank, is not entitled to pay, at the same time, as an officer of militia.—*Vol. 6, p. 461.*

97. Under the laws of March 3, 1835, and March 3, 1839, allowances cannot be made for the detention of an officer or any other person in the service of the United States, whose salary or whose pay and emoluments are fixed by law, when ordered on special service; nor can any allowance be made for their expenses while on such service.—*Vol. 9, p. 508.*

98. Under an opinion of the Attorney General, given in 1842, charges for detention have ever since been disallowed. The prohibitory law applies not only to officers,

but also to any other person whose salary or whose pay or emoluments is fixed by law and regulations.—*Vol. 10, p. 320.*

99. Under the act of September 28, 1850, granting extra pay to the commissioned officers and enlisted men serving in Oregon and California, officers are not entitled to the additional pay allowed to private soldiers, for their servants.—*Vol. 14, pp. 211–12.*

100. There is no law authorizing a lieutenant, while in command of a company, to claim the pay of captain.—*Vol. 8, p. 483.*

101. A captain and brevet major, assigned by general order to command a battalion of volunteers consisting of six companies, is entitled to brevet pay as major, but not to the pay of lieutenant colonel. To entitle an officer of the Army to the pay of a higher grade in the militia, he must be actually appointed to that grade, and not merely assigned to its command. Pay follows the commission held, not the duty performed.—*Vol. 15, p. 196.*

102. The inspectors employed at Springfield and Harper's Ferry can be allowed no greater compensation than that authorized by the 2d section of the act of Aug. 23d, 1842, chap. 186.—*Vol. 11, p. 459.*

103. An officer cannot be allowed extra pay for more than one service at the same time.—*Vol. 2, p. 335.*

104. An officer of the Army engaged in the Mexican boundary survey, and paid at the rate of \$3,000 per annum salary, is not entitled to any allowances for transportation, and fuel, and quarters, during the time for which he is so paid.

105. An officer of the Army, while employed in the removal of Indians, is entitled to his actual expenses beyond

what he would have been subjected to while stationary. And of these expenses he will be required to produce an account.—*Vol. 9, p. 39.*

106. An officer who is taken sick on his journey to attend a court martial, is entitled to his per diem allowance for the time he is detained by sickness.—*Lieutenant Belger's case, January 6, 1844.*

107. By a regulation of the War Department, made in conformity with law, officers are prohibited from passing away or transferring their accounts for any amount not actually due at the time.—*Vol. 11, p. 407.*

108. If an officer conveys away his pay, and afterwards revokes the authority given to receive it, the remedy of the assignee is against the officer. It is not incumbent upon the accounting officers to enforce private transactions of this character.—*Vol. 15, p. 133.*

109. Officers who have resigned, or otherwise left the Army, must take and subscribe the oath as required by the General Regulations of the Army, p. 352, before they can receive the arrearages of pay, &c., due to them.—*Vol. 10, p. 439; Vol. 11, p. 265.*

110. No part of the arrears due an officer who has resigned will be paid him, except upon a full and final settlement of the whole.—*Vol. 15, p. 208.*

111. The mere statement of an officer is not a sufficient voucher upon which to establish a claim.—*Vol. 12, p. 433.*

112. Where an act of Congress grants to the heirs of a soldier "thirty-five years' half-pay as a captain," in consideration of the military services of the ancestor, half-pay is considered as referring to the pay proper, and not to the emoluments or allowances.—*Vol. 15, p. 366.*

[*See par. 75, 146.*]

*Allowance to Commanders of Companies.*

113. A lieutenant in command of a company is not entitled by law or regulation to any additional pay or compensation, except the ten dollars per month allowed for the responsibility of arms, &c., under the law of 2 March, 1827.—*Vol. 12, p. 330.*

114. The law of March 2, 1827, gives the additional pay of \$10 per month to the officer in the *actual* command of a company, as compensation for his responsibility in respect to the clothing, &c., of the company. A constructive command is excluded by the terms of the act.—*Vol. 11, p. 308.*

115. The ten dollars per month provided for by the act of March 2, 1827, is payable to the officer having the *actual* command of the company; and where doubt exists as to who had the command, inquiry is made of the Adjutant General, whose answer on the point is conclusive.—*Vol. 13, p. 69.*

116. The \$10 per month allowed to commanders of companies is solely for responsibility for property.

Temporary absence, therefore, by such an officer, without turning over the public property, or being relieved of his responsibility for it, should not deprive him of this allowance.

By *temporary absence*, is understood an absence not exceeding one month.—*Vol. 15, p. 262.*

117. Except in case of organized companies, no pay is allowed for the responsibility for arms and clothing, when the number of men is less than that of a full company.—*Vol. 13, p. 312.*

[*See par. 74, 241.*]

*Brevet Pay.*

118. Officers of the Army, holding brevet commissions, are entitled to receive the pay and emoluments of their brevet rank when on duty and having a command according to such brevet rank, and at no other time.—*Vol. 14, p. 187, 276.*

119. To authorize the allowance of brevet pay, the officer must not only have a proper command, but must be on duty. He cannot therefore receive it when on leave of absence, though leaving and returning to a command appropriate to his brevet rank.—*Vol. 15, 262-3.*

120. Brevet officers are not entitled to pay according to their brevet rank while serving on a court martial.—*Dec. Sec. Compt., May 28th, 1841.*

121. A brevet colonel commanding an unorganized body of recruits, equal in number to a regiment, is entitled to the pay of his brevet rank.

Organization generally determines to what grade a command belongs ; but where no organization exists, its number must determine its character.—*Vol. 15, p. 194.*

122. A captain and brevet major was assigned to duty as acting field officer of a regiment. Subsequent to the exercise of this command, he received a brevet as lieutenant colonel, to take effect from a date anterior to it. Held, that he was entitled to the brevet pay of major only, and not of lieutenant colonel.

The command of an acting field officer is not necessarily other than that of major. And as the brevet of lieutenant colonel was not conferred till afterwards, it cannot be regarded as the intention of the order to assign him to a

command as such; especially as the regiment in this instance, consisted of only six companies.—*Vol. 15, p. 197.*

123. A captain and brevet major of artillery, in command of two companies of light artillery, is entitled to brevet pay as major of artillery only, and not as major of cavalry. The act of March 3, 1847, allows cavalry pay to the company officers only of light artillery, and not to field officers commanding these companies.—*Vol. 15, p. 39.*

124. A brevet officer of the ordnance corps, in command of an arsenal, is not considered as being “on duty, and having a command according to his rank,” unless he is expressly recognised by the War Department as having such command.—*Vol. 13, p. 211.*

125. The duty of Inspector General of the army is not a command, and cannot therefore authorize the allowance of brevet pay.—*Vol. 15, p. 283; Vol. 14, p. 187.*

126. The performance of duty as assistant adjutant general, by a brevet lieutenant colonel, is not a command according to his brevet rank, and does not entitle him to brevet pay.—*Vol. 14, p. 405.*

127. A brevet Brigadier General, in command of a Military Department, is not thereby entitled to receive brevet pay, unless the force under his command is equal to a brigade.—*Vol. 14, p. 304.*

128. The pay of lieutenant colonel in the line of the Army can be received under a brevet commission, in three instances only: First, when the officer is on duty, and acting as colonel or lieutenant colonel of a regiment. Second, when he is on duty, and commanding not less than four organized companies. Third, when he is on duty, and commanding an unorganized force not less in number than the aggregate of four companies, according

to the legal organization of the corps to which he or they belong ; or a number of organized companies, less than four, and a sufficient unorganized force to make up the difference.—*Vol. 15, p. 438.*

[*See par. 101.*]

### *Stoppage of Pay.*

129. The law of January 25, 1828, requiring a stoppage of pay in all cases where the officer is a debtor to the Government, is not in derogation, nor in any way a modification of the 3d section of the act of March 15, 1820, requiring the Comptroller to report delinquents for suit.—*Vol. 6, p. 448.*

130. A stoppage required by the law of January 25, 1828, includes the additional pay of the officer for responsibility for clothing, arms, and accoutrements of the company, as well as his regular monthly pay. His allowances for subsistence, quarters, and fuel are not included. *Vol. 12, p. 307; Vol. 8, p. 523.*

131. Officers of the Army can draw no part of their *pay proper* when stopped by the President.—*Vol. 14, p. 273.*

### *Soldiers' Pay.*

132. Privates in the Army enlisted for five years prior to March 2, 1833, were entitled to full pay of \$6 per month after they had served the two first years of their enlistment; and to receive such retained pay, if any, as had accrued under the 2d section of the act of March 2, 1833, provided they had served *honestly and faithfully* during that portion of the term of their enlistment.—*Vol. 5, p. 139.*

133. No crime except desertion forfeits the pay of a soldier, except upon sentence of a court martial, unless in consequence of the crime, the soldier is withdrawn from service.—*Vol. 15, p. 448.*

134. In all cases of claims for pay by discharged non-commissioned officers or soldiers, the *duplicate* certificate of enlistment, service, &c., as prescribed in the regulations of the Pay Department, must be produced.—*Vol. 12, pp. 358, 360.*

135. When a soldier who was discharged on the expiration of his term of service, claims pay and clothing, his name not appearing on the regimental pay roll for the time embraced in his claim, the accounting officers will require the production of the descriptive certificate of his discharge, as the surest evidence that the claim has not been paid by a paymaster.

136. When the witnesses required by the regulations, to payments made to soldiers cannot be had, other satisfactory proof of the signature may be received.—*Vol. 14, p. 50.*

137. A receipt by mark, witnessed by two paymasters' clerks, is a substantial compliance with the regulation.—*Vol. 14, p. 75.*

138. When a soldier is discharged, and his account settled and paid by a paymaster, the payment purporting to be in full, that payment is to be considered final, unless shown by conclusive testimony to have been erroneous.—*Jno. A. Powell's case, January, 1848.*

139. When from the situation of his company, or the nature of the service, a soldier cannot receive his discharge when his term expires, and is from necessity retained in service, he is to be paid up to the time of his actual discharge.—*Vol. 6, p. 149.*

140. A soldier discharged on habeas corpus as a minor, forfeits all pay and allowances previously due, both by the Regulations of the Army, and upon general principles.—*Vol. 15, p. 38.*

141. When an officer or soldier is furloughed, in anticipation of his discharge or the expiration of his term of service, he cannot claim for the balance of his term both his travel pay and his pay as in service.—*Lieut. Fellnagle's case, and W. S. Thompson's case, Oct. 19, 1848.*

142. A soldier, who is taken prisoner by the enemy, is entitled to his pay and allowance during the time he is detained, and to travelling allowance from the place where he is released to his home. Volunteers however, are not, under such circumstances, entitled to compensation for use and risk of horses.—*Vol. 12, p. 429.*

143. A private soldier of militia or volunteers, who is illegally and against his will discharged from service, is entitled to his pay up to the time of the discharge of the company to which he belonged, or to the expiration of his term of enlistment.—*W. C. Hayse's case, June 16, 1849.*

144. A soldier under arrest by the civil authority on a criminal charge, will be entitled to his pay for the time he was in custody, provided he is tried and acquitted, or discharged without trial.—*Case of Dennis Clary, Jan. 8, 1844.*

145. There is no law or regulation under which a private soldier can be allowed the pay of a lieutenant, for the performance of duty in the Subsistence Department.—*Vol. 12, p. 302.*

146. The regiment of mounted riflemen, raised under the act of May 19, 1846, which gives the President no authority to convert the regiment into one of infantry,

is entitled to dragoon pay even before the men were mounted.—*Dec. Sec. Compt., Sept. 23, 1846.*

147. Subsequent to the act of March 2, 1833, a paymaster's clerk, if a first sergeant, is entitled to \$30; if a sergeant merely, \$24; and if a corporal, to \$16 per month.—*Vol. 8, p. 506.*

148. Men enlisted to serve as dragoons, are not entitled to any bounty. Those only who are "enlisted to serve in the artillery and infantry" are entitled to bounty, under the 2d section of the act of January 12, 1847. This decision does not apply to the enlistments for the 3d regiment of dragoons.—*See act of March 3d, 1847, chap. 61, sec. 15. Dec. Sec. Compt., Feb. 2, 1848.*

149. The 17th section of the act of March 3, 1847, chap. 61, gives the private soldier who has received a certificate of merit, the \$2 per month additional pay allowed by said act, during the residue of his service under the enlistment by which he is held at the time of granting the certificate, although he may have been subsequently appointed a non-commissioned officer.—*Vol. 12, p. 375.*

150. Discharged soldiers are not entitled to the increased allowance given by the act of Sept. 28, 1850, as travelling pay, the act allowing them the extra pay only when *serving* in Oregon and California, and not after a discharge from service. Nor is an apprehended deserter, whose period of service would have expired prior to July 1, 1850, and who receives an honorable discharge, entitled to the increased pay while making up time lost by desertion.—*Vol. 14, pp. 211-12.*

151. There is no grade of armorer in the line of the Army. But when a man mustered as such, performed

the duties of farrier and blacksmith, he may receive the pay of that grade.—*Vol. 15, p. 393.*

152. A person borne on the rolls of a regiment as hospital steward, and mustered and paid as such, cannot subsequently be allowed pay as acting assistant surgeon.—*Vol. 15, p. 364.*

[*See par. 63, 64, 73, 247, 248, 253, 254, 180.*]

### *Extra Duty.*

153. To entitle soldiers to compensation under the act of March 2, 1819, the ten days' extra duty required by that act should be as nearly continuous as is consistent with the performance of the regular duties (such as musters for inspection, &c.,) that are imposed upon them.—*Vol. 5, p. 233.*

154. A sergeant employed as assistant clerk in one of the bureaux of the War Department, or as assistant in a subsistence storehouse, is entitled to the benefit of the provisions of the act of March 2, 1819.—*Vol. 7, p. 212.*

155. The sergeants acting as orderlies, &c., in the military bureaux, who are entitled to the per diem of fifteen cents, under the act of March 2, 1819, will also receive a commutation of the whiskey ration authorized by the same act.—*Dec. Sec. Compt., Oct. 16, 1846.*

156. On the 1st day of April, 1835, the Secretary of War prohibited, by regulation, the allowance of commutation for the whiskey ration to sergeants acting as clerks and messengers; and that regulation continued in force till the 16 of October, 1846, when it was rescinded by the Secretary of War. Held, that, during the intervening period, sergeants acting as clerks and messengers were not entitled to the allowance.

157. Privates of volunteers and militia are entitled, for extra duty, to no more than the fifteen cents per day authorized by the act of March 2, 1819.—*Dec. Sec. Compt.*, April 28, 1838.

158. Since the passage of the act of August 23, 1842, no allowance can be made to soldiers employed as teamsters, either in the volunteer or regular service, beyond the fifteen cents per day authorized by the act of March 2, 1819.—*Vol. 13, p. 14.*

159. Sergeants or soldiers doing duty of clerks in either the Quartermaster's or Subsistence Departments, are entitled to the commutation for whiskey rations.—*Vol. 5, p. 230.*

160. A soldier employed in the Commissary and Quartermaster's Departments, at the same time, is not allowed the extra pay for both.—*Vol. 9, p. 517.*

161. The act of March 2, 1819, applies to any sergeants in the Army, whether of ordnance or otherwise, if employed in the manner specified. By the term "constant labor" used in that act, is intended actual manual labor out of the regular line of duty. The care of stores at a post is not such employment as entitles an ordnance sergeant to the extra allowance given by the act.—*Vol. 15, p. 224.*

162. A soldier, when performing duty as acting sergeant major, is doing a proper military duty, and not a fatigue or extra duty entitling him to the benefit of the act of March 2, 1819.—*Vol. 13, p. 116.*

163. Carrying an express is not considered as coming within the term "*fatigue duty*," for which fifteen cents per day is allowed to a private soldier by the regulations.—*Dec. Sec. Compt.*, July 20, 1838.

164. An assistant to an assistant commissary of subsistence, who is detached on command, or as a witness before

a court-martial, and receiving seventy-five cents per day while so detached, cannot for the same period receive the per diem of fifteen cents.—*Dec. Sec. Compt.*, 1846.

*Retained Pay.*

165. Under the law of January 12, 1847, a recruit cannot claim his retained bounty until he shall have joined for duty the regiment in which he is to serve; but if the Government, by disbanding him, put it out of his power to join his regiment, the retained bounty should be paid him.—*Dec. Sec. Compt.*, May 14, 1847.

166. A soldier who is sentenced by a court martial to forfeit a month's pay, does not thereby forfeit his retained pay.—*Dec. Sec. Compt.*, Oct. 11, 1843.

167. A soldier re-enlisting before the expiration of his first term of service, is entitled to his retained pay for that term of service to the time of re-enlistment only.—*Vol. 10, p. 321.*

168. When a soldier dies before the expiration of his term of his service, or is discharged upon a surgeon's certificate, the retained pay may be claimed.—*Vol. 11, p. 206.*

169. When a soldier is slain in battle or disqualified for further duty, by reason of wounds received or other inability brought on in the service, the Government has no right either in law or equity to withhold his retained pay.—*Vol. 6, p. 150; Vol. 5, p. 573.*

170. When a soldier is *dishonorably* discharged before the expiration of his term of enlistment, without any cause being assigned, the paymaster will withhold the retained pay until the cause of discharge is ascertained, and then refer the subject to the Paymaster General, if necessary.—*Dec. Sec. Compt.*, February, 1846.

171. When a soldier is discharged from service by reason of his own misconduct, his retained pay is thereby forfeited, and no part of it can be paid to the sutler or laundress.—*Dec. Sec. Compt., Sept. 6, 1843.*

172. A soldier discharged for “utter worthlessness,” before the expiration of his term of service, is not entitled to his retained pay.—*Vol. 11, pp. 204, 207, 211.*

173. A soldier who is discharged before the expiration of his term of service, on procuring a substitute, is not entitled to the retained pay. The bounty land and retained pay go to the substitute.—*Dec. Sec. Compt., March 13, 1844.*

### *Extra Pay.*

174. By the Joint Resolution of July 29, 1848, claims for the three months' extra pay, provided for by the 5th section of the act of July 19, 1848, are to be settled by the Paymaster's Department of the Army, under such regulations as the Paymaster General, with the approval of the Secretary of War, shall establish.—*Vol. 12, p. 347.*

175. On the discharge of a private soldier who is entitled to the three months' extra pay, under the act of July 19, 1848, and who, at the time of his discharge, was receiving the additional pay of \$2 per month on a certificate of merit, the additional pay should be allowed as part of the three months' extra pay.—*Vol. 13, p. 272.*

176. A widow of a deceased soldier, intermarrying, is entitled to the three months' extra pay due her deceased husband, under the act of July 19, 1848, and her receipt may be taken as sufficient evidence of payment.—*Dec. Sec. Compt., September, 1849.*

177. The three months' extra pay provided for by the act of July 19, 1848, is a gratuity, and not like a balance of wages, part of the assets of the soldier's estate, and belongs, by the terms of the law, first to the widow, secondly to the children, thirdly to the parents, and fourthly to the brothers and sisters.—*Scott's case, January 2, 1849.*

178. A carriage maker, who was required to do duty in the ranks with his corps, is entitled to receive a certificate of merit, under General Order No. 4, of January 24, 1849, and is entitled to the three months' extra pay, under act of July, 1848.—*Dec. Sec. Compt., September, 1849.*

179. Officers performing staff duty, in addition to their duty in the line, have been considered entitled to have included in the three months' extra pay, provided for by the act of March 3, 1815, the compensation of their staff rank. The same principle has been decided to be applicable in settling the accounts of officers discharged at the close of the Mexican War.—*Dec. Sec. Compt., Sept. 17, 1819.*

180. Officers of the line of the Army, entitled to three months' extra pay, who at the time of their discharge were receiving additional pay for performing staff duty, are entitled to have such compensations included in computing the extra pay.—*Vol. 13, p. 272.*

181. To entitle an officer who resigned his commission on account of ill health, before his term of service expired, to the three months' extra pay, under the act of July 2, 1819, it must appear that the ill health amounted to disability, was contracted in the service, and was assigned at the time as the cause of resignation.—*Vol. 15, p. 61.*

182. A soldier promoted to the rank of hospital steward, if doing duty as such at the time of his discharge from service, is entitled to the three months' extra pay in that capacity.—*Grimes's case, September, 1849.*

183. The act of July 19, 1848, granting three months' extra pay to soldiers who served in the war with Mexico, applies to those only who have joined their companies for service.—*Vol. 14, p. 295.*

184. Actual service in the Mexican war is necessary to entitle a soldier to the extra pay allowed by the act of July 19, 1848. Hence, service in the Army during the continuance of the war, but away from its seat, is not sufficient.—*Vol. 15, p. 382.*

185. A soldier who furnishes a substitute, and is discharged from service, is not entitled to the three months' extra pay or land bounty; the substitute is entitled to both. *E. W. Barns's case, August, 1851.*

186. Surgeons who attended the volunteer regiments until Army surgeons reported for duty, have not been considered as officers of the Army, but civilians temporarily engaged, and consequently are not entitled to the three months' extra pay provided for by act of July 19, 1848.—*Vol. 14, p. 202.*

187. Surgeons who attended the volunteer regiments in the war with Mexico, as a part of their staff, but were not appointed by the President as provided by law, were not officers of the Army, and therefore not entitled to the three months' extra pay.—*Vol. 15, p. 171.*

188. Paymasters' clerks are not entitled to the three months' extra pay provided for by the act of July 19, 1848.—*Dec. Sec. Compt., Oct. 3, 1849.*

189. Officers of the Army, serving in volunteer corps under commissions from State authority, are not entitled

to the extra pay allowed by the act of July 19, 1848.—*Vol. 14, p. 113.*

190. Officers voluntarily leaving the service by resignation, are not entitled to the three months' extra pay under the act of August 3, 1848.—*Vol. 14, p. 450.*

191. Marines who have served in the war with Mexico, are not entitled to the three months' additional pay allowed by law, unless they *served with the army*; and this fact should be made to appear by endorsement on the discharge, or by a certificate from the commander of the corps, or by some other unquestionable evidence.—*Vol. 12, p. 313.*

192. An assistant surgeon, discharged under the act of August 23, 1842, is entitled to the three months' extra pay provided for by said act.—*Vol. 9, p. 406.*

193. Officers of the Army, while *en route* to Oregon, California, or New Mexico, are not entitled to the extra pay given by the acts of September 28, 1850, and August 31, 1852. It can only be allowed for the period during which they are actually serving in those places.—*Vol. 15.*

194. Where a regiment was raised to serve during the war with Mexico, and at the close of the war was ordered to be marched home and then mustered out of service, an officer belonging to it, who resigned his commission after hostilities had terminated, but before the regiment had reached home, is not entitled to the three months' extra pay.—*Vol. 15, p. 61.*

195. A soldier holding a certificate of merit, who re-enlists in the Army in the manner specified in the 29th section of the act of July 5, 1838, is entitled to have the additional \$2 per month, given by his certificate, included in computing the three months' extra pay allowed him by that act, as a bounty for re-enlistment.—*Vol. 15, p. 337.*

196. The act of April, 1818, abolished (among others,) the office of Quartermaster General of Division in the Army. It also created that of Commissary General, the rank and emoluments of which are higher than those of Quartermaster General of Division, and gave three months' extra pay to all officers discharged by its operation. The officer who held the first named appointment was, with an interval of only four days, appointed to the latter, which he has ever since retained. Held, that he was not "de-ranked," within the meaning of the act, so as to become entitled to the extra pay.—*Vol. 15, p. 86.*

[*See par. 62, 72, 99, 103.*]

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#### PAY DEPARTMENT.

197. The 2d section of the act of August 12, 1848, "concerning the Pay Department of the Army," is considered as independent of the first section, and its provisions cannot be applied to cases arising prior to its enactment.—*Vol. 12, p. 321.*

198. The salary allowed the Paymaster General by the act of 24 April, 1816, was intended as a full and complete compensation for his services, and he is entitled to no other allowances whatever.—*Vol. 2, p. 386.*

199. Under the act of 16 May, 1812, district paymasters were entitled to the pay and emoluments of a major of infantry only.—*Vol. 2, p. 1.*

200. One of the sureties on a paymaster's bond dying, his estate is not thereby released from its liability for the future defaults of the paymaster.—*Vol. 14, p. 194.*

201. The salary of paymaster's clerks, being fixed by law, the accounting officers are not authorized to allow any sum beyond the salary so fixed.—*Vol. 14, p. 52.*

202. A private citizen, employed as paymaster's clerk, may be paid a reasonable compensation for his services, not exceeding that to which a non-commissioned officer of infantry would be entitled.—*Vol. 9, p. 9.*

203. On the 15th June, 1846, the Secretary of War authorized the employment of clerks to assist the paymasters in paying the volunteers under the special direction of the Paymaster General.

204. A paymaster will be allowed for but one clerk.—*Vol. 15, p. 214.*

205. Under the act of July 19, 1848, paymaster's clerks are not entitled to three months' extra pay.—*Vol. 14, p. 440.*

[*See par. 167, 170, 174, 225, 279.*]



## QUARTERS AND FUEL.

206. The General Regulations, authorizing payment of commutation for fuel and quarters, restrict it to the time when the officer is actually at his post, or when temporarily absent on duty, and do not treat it as an emolument.

Such is the construction they have always received from the Secretaries of War and the accounting officers.

Nor is an officer of engineers, in charge of several works, but absent on leave, entitled to the extra per diem allowed by Engineer Regulations 77, to meet the expenses of fuel and quarters at the additional posts.

By temporary absence is meant an absence for a period not exceeding thirty days.—*Vol. 15, pp. 49, 50.*

207. Officers on leave of absence, or awaiting orders, are not entitled to fuel and quarters. An officer who receives his quarters in kind, must receive his fuel in kind also.—*Vol. 15, p. 142.*

208. Under the Army Regulations in force in 1830, officers of the Corps of Engineers, engaged in the construction of fortifications or other public works, are put on the same footing, in regard to the allowance of mess rooms and kitchens, and fuel for the same, with officers at garrisoned posts, as provided by par. 1020 and 1025.—*Vol. 3, p. 287.*

209. Under existing decisions, members of courts-martial, away from their permanent posts, are entitled to receive commutation of quarters and fuel at such posts, though their absence may exceed thirty days. This is an exception to the general rule.—*Capt. Clark's case, July, 1852.*

210. The commander in chief of the Army stands on the same footing with all other officers as to quarters and fuel, except as to amount. He is entitled to his regulated allowance of commutation, when not provided with public quarters or tents, and no more. A charge for his house rent in Washington, while commanding the Army in Mexico, and receiving there either commutation or public quarters, cannot be allowed.—*Gen. Scott's case, July, 1852.*

211. In the Army Regulations in force March 25, 1830, (par. 1025, relative to additional fuel and quarters,) the term "*mess of officers*" means a number not less than six, and the term "*post*" includes permanent as well as all other posts.—*Vol. 3, p. 156, 189.*

212. It is not allowable for an officer who is accommodated in public quarters, but who, from a deficiency of public quarters, cannot be furnished with his full complement of rooms, to commute for the difference.

Fuel and quarters are not an emolument, but are for the necessary accommodation and comfort of the officer.—*Vol. 15, pp. 143, 186.*

213. If the exigencies of the service require the quartermaster to hire private quarters for the accommodation of officers, in connexion with public quarters, and they are actually occupied as such, the rent paid will be allowed.—*Vol. 15, p. 186.*

214. On the 16 October, 1847, the Secretary of War issued an order requiring the officers of the Quartermaster's department to issue to the families of officers of the Army serving in the field, who reside in public quarters, one half the allowance of fuel authorized by regulations to their respective grades.

215. The act of 23 August, 1842, expressly prohibits commutation for fuel and quarters to officers of the Army serving at the armories, though the quartermaster may hire quarters at the armories for the actual occupation of officers.—*Vol. 15, p. 246.*

[*See par. 104, 242, 293.*]

## RATIONS.

1. RATIONS.
2. ADDITIONAL RATIONS.
3. DOUBLE RATIONS.
4. LONGEVITY RATIONS.

*Rations.*

216. Under the 14th section of the act of 30 March, 1814, (providing that any officer, non-commissioned officer, or private, captured by the enemy, should receive, while in captivity, his pay, subsistence, and allowances, as if in service,) the ration is to be commuted at twenty cents per day.—*Dec. Sec. Compt., January, 1847.*

*Additional rations.*

217. Lieutenants in the receipt of extra pay for staff duties were not affected by the law of 1827, and are entitled to only three rations per day when in the performance of staff duties, and six when in command of a double ration post.—*Dec. Sec. Compt., June 20, 1840.*

218. Subalterns employed in the Adjutant General's office, in the Quartermaster's and Subsistence departments, aids de camp, adjutants of regiments, and all others who receive additional compensation, are excluded from the additional ration under the law of March 2, 1827.—*Vol. 5, p. 268.*

219. No subaltern officer, who is in the performance of any staff duty, for which he receives an extra compensation, is entitled to the additional ration provided for by the act of March 2, 1827, chap. 42.—*Vol. 8, p. 325.*

220. The duty of an adjutant is considered staff duty, and the additional ration provided for in the act of March 2, 1827, is not to be allowed him.—*Vol. 12, p. 179.*

*Double Rations.*

221. The act of 23 August, 1842, when it speaks of military geographical departments, has reference to such departments only as are established by the order or authority of the President of the United States.—*Dec. Sec. Compt., March 4, 1848.*

222. The Military Departments established in Mexico, are not considered as coming under the rule for the allowance of double rations.—*Vol. 13, p. 45.*

223. Fixed and permanent posts of the Army are designated and established by the War Department. The decision of that Department, is therefore conclusive upon the accounting officers, upon the question whether a post is, or is not, within that class.—*Vol. 15, p. 178.*

224. The Paymaster General is not entitled to double rations, under the Army Regulations of 1841, par. 1251. *Vol. 11, p. 82.*

225. The Adjutant General being temporarily absent from duty, the officer who acts in his stead is regarded as a mere substitute for him, and the latter is entitled to the pay of the office, and the substitute to double rations, under the Regulations of June 14, 1822; being double the rations which he receives by virtue of his own rank in the Army.—*Vol. 9, p. 4.*

226. A “*permanent or fixed post*” must be garrisoned by at least one company of troops, to entitle the commanding officer thereof to the double rations provided by

the 6th section of the act of August 23, 1842.—*Dec. Sec. Compt., Lieut. R. P. Hammond's case.*

227. Since the act of 23 September, 1850, engineer officers, commanding fixed and permanent posts of the Army, though not garrisoned with troops, are entitled to double rations.—*Vol. 15, p. 408.*

228. Officers of the Engineer Corps charged with the construction of fortifications, or having separate commands, are entitled to double rations. Officers of infantry are not embraced within the Regulations of 1828, and therefore are not entitled to double rations while doing temporary duty under the Engineer department.—*Vol. 5, p. 469.*

229. Having charge of a *survey* for fortifications does not entitle the officer to double rations under the 6th art. of the Regulations of 28 May, 1842, which requires the officer to have command of men engaged in the *construction* of fortifications.—*Vol. 10, p. 259.*

230. Engineer officers employed on private works, are not entitled to extra or double rations.—*Vol. 5, p. 241.*

231. Under the Regulations of the War Department of May 18, 1833, double rations have not been extended to artillery officers on engineer duty, nor are they entitled to receive them, there being no law or regulations specifically granting them to such officers.—*Vol. 5, p. 343.*

232. Under the act of March 3, 1849, making appropriations for the Army, arsenals and armories are to be considered permanent or fixed posts, and their commanders entitled to double rations.—*Vol. 13, p. 310.*

233. An ordnance storekeeper, not having military rank, cannot be considered as a commanding officer, within the meaning of the act of March 10, 1802, authorizing the

allowance of additional rations.—*Dec. Sec. Compt., May 15, 1835.*

234. When one officer relinquishes, and another officer assumes on the same day the command of a double ration post, the senior officer is entitled to the extra ration for that day.—*Dec. Sec. Compt., August 10, 1844.*

235. Absence on leave, for a period not exceeding one month, by the commander of a double ration post, does not deprive him of double rations during the interval.—*Vol. 15.*

### *Longevity Rations.*

236. An officer of the Army, transferred by appointment to the Marine Corps, is not entitled to additional rations for the time he served in the Army, under the law of July 5, 1838.—*Vol. 10, p. 488.*

237. By the 15th section of the act of July 15, 1838, every commissioned officer of the line or staff, except general officers, is entitled to receive one additional ration per day for every five years he may have served, or shall serve in the Army.—*Vol. 6, p. 560.*

238. Military storekeepers attached to the purchasing department of the Army, are entitled to the longevity ration, given by the act of July 13, 1838.—*Vol. 7, p. 28.*

239. In computing the longevity rations of an Army officer, the service claimed for need not have been consecutive. But service in the Marine Corps, or as a cadet at West Point, cannot be allowed for.—*Vol. 6, p. 571.*

## RECRUITING SERVICE.

240. Officers in command of recruiting detachments, consisting of a numerical force equal to a full company, are entitled to receive \$10 per month additional pay, under the provisions of the act of March 2, 1827.—*Dec. Sec. Compt., January 24, 1838.* .

241. The uniform practice has been, to allow to officers stationed on the recruiting service \$10 per month only for quarters, except at commutation posts.—*Vol. 6, p. 166.*

242. It was held that the expense of recruiting the volunteer regiments for the Mexican war might be paid from the appropriation for "*Expenses of Recruiting.*"—*Dec. Sec. Compt., July 17, 1847.*

[*See par. 68, 258.*]

## SERVANTS.

243. The right to a servant, and to fuel for him, is one of law and regulation, but an officer has no legal claim for allowance for a private servant, unless he actually keeps one in service.—*Vol. 13, p. 46.*

[*See par. 266, 274.*]

## SUTLER.

244. The United States are not responsible for the money collected for the sutlers by the paymasters under the 196th paragraph of the Army Regulations of 1841. The pay-

master acted in such cases exclusively as the sutler's agent, and it is not in any manner incumbent on the United States to guarantee the payment of the debt, or become responsible for the fidelity of the paymaster.—*Vol. 9, p. 422.*

245. A written acknowledgment of a soldier, that he is indebted to the sutler in a certain amount, was considered as sufficient, under the Army Regulations of 1841, to authorize the deduction of the amount stated to be due the sutler from the pay of the soldier, and the payment of the same to the sutler.—*Vol. 11, p. 18.*

246. Since the passage of the act of March 3, 1847, a sutler cannot, by furnishing supplies to a soldier, acquire a lien on any part of his pay, nor a right to appear at the pay table to receive the soldier's pay from the paymaster.—*Vol. 14, p. 227.*

247. A sutler is not entitled to receive the amount due a soldier at the time of his discharge, unless he has power to give a receipt therefor.—*Vol. 13, p. 141.*

248. When a recruit is rejected, no part of his wages could be properly paid to the sutler while the Regulation of 1841 was in force, until all dues were refunded to the United States; and the same principle governs in the case of minors discharged on habeas corpus.—*Vol. 8, p. 298.*

249. By the 198th paragraph of the Army Regulations of 1841, debts due the sutler from a soldier at the time of his desertion, were to be settled by the paymaster out of the arrearages due the soldier at the time of his desertion; but the retained pay could not be included in the arrearages, that not being due under the 16th section of the act of July 5, 1838, until the expiration of the soldier's term of service.—*Vol. 9, p. 399.*

250. So much of the pay of a soldier as is required to satisfy the certified claims of the sutler and laundress could be diverted from that object by a court-martial, while the Regulation of 1841 remained in force.—*Dec. Sec. Compt., September 20, 1843.*

251. In the case of a deserter who has been apprehended, the paymaster was not authorized under the Regulations of 1841 to pay the sutler's bill out of the wages due the deserter, until he should have first paid all the expenses incurred in the apprehension of such deserter.—*Vol. 8, p. 298.*

252. The practice of paying debts certified to be due the sutler of a military post, out of the arrearages due to the indebted soldier at the time of his desertion, is expressly prohibited by the 11th section of the act of March 3, 1847.—*Vol. 12, p. 46.*

253. Since the act of March 3, 1847, a sutler can have no lien upon the pay of the soldier under any circumstances. Where soldiers have deceased, therefore, with pay due them from the Government, and indebted to the sutler, it would be a violation of law to allow the claim of the sutler out of the pay due the men at the Treasury. And still less can accounts due from men who have deserted be allowed, because the desertion works an entire forfeiture of all pay due at the time it takes place.—*Vol. 15, p. 377.*

254. There is no authority to pay over the amount due a teamster on his deserting the service to a sutler, or to any other person to whom he may be indebted.—*Vol. 12, p. 478.*

255. Where necessary supplies were furnished to a company of volunteers at the solicitation of the officers

acting as agents for the men, and upon an agreement that the amount was to be deducted from the pay of the company, and the stoppages were accordingly made on the rolls, with the approval of the commanding general, and the deduction made from the pay of all of the men who were paid by the paymaster, the same deductions were made at the Treasury from the arrearages due the remainder of the company, and paid to the persons who furnished the supplies. Those persons are not sutlers within the meaning of the act of 1847, nor is the payment to them such an one as is prohibited by that act.—*Vol. 15, p. 233.*

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### TEAMSTERS.

256. Teamsters employed under the act of March 3, 1847, are included in the "*additional force*" required by that act to be discharged at the close of the Mexican war. But if retained in service beyond that period, are entitled to pay until discharged.—*Vol. 14, p. 334.*

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### TRAVEL PAY.

#### 1. OFFICERS.

#### 2. SOLDIERS.

#### *Officers' Travel Pay.*

257. No expenses of transportation of officers on recruiting service will be admitted, that do not arise from orders

emanating from general head quarters, except they be required to visit branch or auxiliary rendezvous under their charge, when they will be allowed the actual expenses incurred.—*Vol. 14, p. 190.*

258. The travelling allowance to officers who travel without special instructions from their superiors, but upon duty which conveys the general authority, or imposes the necessity for travel, are the actual expenses of transportation and portage, as provided for by the 5th paragraph of the Regulations of the War Department of the 5 March, 1844, and no more.—*Vol. 11, p. 135.*

259. An officer of the Army who hires a wagon at the expense of the Government to transport him upon a journey, is not entitled to travelling allowance for such journey.

260. Travelling expenses are not allowed unless the journey was performed by direction of the proper authority.—*Vol. 11, p. 422.*

261. Expenses of a journey by an officer of the Army or Navy, without orders, for the purpose of settling his accounts at the Treasury, will never be allowed, except upon a certificate from the hand of one of the officers through which the accounts passed, that his attendance was by him regarded as necessary.—*Vol. 15, p. 370.*

262. The rule in stating accounts for travelling expenses incurred under orders, is to allow for the distances fixed by the Post Office Department, "*on the route usually travelled,*" or the "*shortest mail route,*" as the case may be. And this rule applies to all officers and persons who travel at the public expense in any branch of the public service.—*Vol. 14, p. 347.*

263. The "*shortest mail route*" is the legal standard in calculating payments for travel performed by officers on duty.—*Vol. 11, pp. 15, 186.*

264. Officers ordered with men to attend civil courts as witnesses, in virtue of subpoenas or orders from superior officers, are entitled to an allowance for transportation of baggage; the men not being considered a *detachment* in the military sense of the term.—*Capt. A. R. Hetzel's case, 1837.*

265. By article 77, par. 984, of General Regulations for the Army, of 1841, a general or field officer, when traveling on duty without troops, will be entitled to transportation for one servant, at the rate of eight cents per mile, on certifying that the servant actually accompanied him on his journey.—*Vol. 9, p. 633.*

266. An officer performing a journey under circumstances which entitle him to travelling allowance, may travel by private conveyance, and charge what the journey would have cost him by the usual conveyance.—*Lieut. Martin's case, October 10, 1842.*

267. The transportation of regular officers must be computed by the "*shortest mail route*;" that is, the shortest route by which the mail is actually transported between the points of computation—not the shortest line that could be drawn between the points passing over local mail routes. This rule, like all others, must have its exceptions. Where the mail route happens to be unusually circuitous, and there is a shorter and *usually travelled* route, the latter should be adopted.

But where the shortest *actual* mail route is also the usually travelled route, that must be adopted. The distance should be computed upon the routes existing when the journey is made.—*Vol. 15, p. 194.*

268. Where an officer's claim for transportation has been settled, and has so remained, without objection by him, for a year, an additional claim, on the ground of an under estimate of the distance travelled, will not be entertained at the treasury.—*Vol. 15, p. 226.*

269. The transportation of officers' families at the public expense is entirely unauthorized by law; nor has any person authority to enter into a contract with an officer for the payment of the passage money of his family, either in a transport vessel or otherwise, upon condition that he relinquish his rations or other allowances during the period of the voyage.—*Vol. 15, p. 252.*

270. The Mormon battalion of volunteers was mustered into service at Council Bluffs, in Iowa, marched to Mexico by the overland route, and was discharged at Los Angeles, in California, in July, 1847. A small portion of the battalion returned across the country, and others by way of Panama. The latter was the usually travelled route, the former being practicable to armed parties only. No mail route then existed.

The act of June 17, 1846, requiring their travelling allowance home to be computed by the "*most direct route*," it was held (and this decision was confirmed by the Attorney General) that the allowance should be computed by the overland route.—*Vol. 15, p. 127.*

271. The Regulations of 5 March, 1844, allow only seven cents per mile to officers travelling on court martial service.—*Dec. Sec. Compt., 1846.*

272. On the discharge of a regiment of volunteers, the officers are not allowed travelling pay to any other State or territory than that in which the regiment was raised, and where they received their appointments.—*Vol. 14, p. 308.*

273. Constructive transportation of a servant can in no case be allowed. Officers of the volunteer regiments raised for service in the Mexican War are subject to the same rule on this subject that is applied to those of the regular Army.—*Vol. 15, p. 298.*

274. The travelling expenses of an officer, incurred by him in performing a journey in pursuance of an order received while he is on furlough, can not be allowed by the accounting officers.—*Vol. 11, p. 138.*

275. Par. 1203 of the Army Regulations must be considered as a modification of par. 983, so far as relates to medical officers being entitled to transportation on obeying the first order.—*Vol. 9, p. 406.*

276. Officers on leave of absence must return to their duty, whenever that may be, without expense to the Government. Orders given for their return to duty are not to be so construed as to entitle them to transportation.—*Vol. 15, p. 142.*

277. Since the passage of the act of August 23, 1842, no allowance can be made to military storekeepers for transportation of baggage, or commutation for it.—*Vol. 14, p. 360.*

278. Paymaster's clerks are entitled by law to the actual expense of transportation while travelling under orders in discharge of their duty.—*Dec. Sec. Compt., February 24, 1835.*

[*See par. 104.*]

### *Soldiers' Travel Pay.*

279. A soldier, when honorably discharged from service, is allowed his pay and rations for such term of time as

shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day.

The place of enlistment is usually considered the place of residence, within the meaning of the law. But if the soldier is enlisted in an enemy's country, and brought back to the United States and discharged, his travelling allowance will be computed from the place of discharge to his home or place of actual residence.—*Vol. 14, p. 35.*

280. A soldier discharged under such circumstances as entitle him to the benefit of the provisions of the 15th section of the act of January 29, 1813, is entitled to his travelling allowances under said act from the place where he was when the discharge took effect to the place of his residence.—*Vol. 12, p. 34.*

281. A soldier or marine who re-enlists under the act of March 2, 1833, is entitled to his transportation to his home or the place of his enlistment.—*Vol. 7, p. 413.*

282. A soldier who is discharged for the purpose of being employed as a teamster in the Quartermaster's Department is legally entitled to travelling allowances under the 15th section of the act of January 29, 1813.—*Dec. Sec. Compt., May 15, 1850.*

283. A soldier who, at the time of his discharge from service, is in custody of the civil authority, and under sentence of imprisonment, is not entitled to receive travelling allowance.—*Vol. 15, p. 299.*

284. A soldier who was discharged in Mexico, and died on his passage home, was entitled to his travelling allowance at the moment of his discharge. His representatives, therefore, have a legal claim to it.—*Dec. Sec. Compt., 20 April, 1849.*

285. Under the act of May 13, 1846, volunteers are entitled for their travel to the place of rendezvous to one day's pay and subsistence for every twenty miles travel from their place of residence; and all mounted privates, non commissioned officers, musicians, and artificers are entitled, in addition, to forty cents per day for the use and risk of their horses, and the legal allowance for forage.—*Vol. 11, p. 267.*

286. A soldier of volunteers or militia, who, from sickness or other proper cause, cannot avail himself of government transportation, or march with his company, is entitled to his travel pay from the place where he may rightfully be when his company is discharged, to his place of residence.—*B. T. Mershon's case, June 27, 1848.*

287. Volunteers originally called into service for six months, and who, on the expiration of their term of service, were remustered for a second term, are not entitled to travelling pay and rations for each term to the place of their original organization or residence; no pay for constructive journeys home is allowed.—*Vol. 14, p. 228.*

288. Where an officer or soldier is furloughed before the expiration of his time of service, he cannot receive for the balance of his time, both his travelling pay and his pay as in service.—*Vol. 12, p. 363.*

289. A soldier on receiving and accepting a commission as a company officer, is not entitled to the travelling allowance provided for by the 15th section of the act of January 29, 1813.—*Vol. 12, p. 334.*

## TOPOGRAPHICAL ENGINEERS.

290. Infantry officers having charge of parties doing topographical duty, are embraced in the regulation of September 1, 1832. The word "*corps*," as used in that regulation, embracing all the officers doing topographical duty by assignment.—*Vol. 7, p. 72.*

291. By the regulation of 13 January, 1832, the *per diem* allowance to officers employed in the field or topographical duty, is one dollar. This allowance, being in lieu of transportation and quarters, has reference only to the time he is so employed.—*Vol. 6, p. 71; Vol. 5, p. 323.*

292. By an order of the War Department of June 11, 1828, the *per diem* allowance to officers on topographical duty was fixed at one dollar, to be paid by the Quartermaster's Department; and this allowance being in lieu of quarters, and in all cases where tents are furnished to officers so employed, a deduction will be made on that account of twenty cents per day.—*Vol. 14, p. 300.*

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USE AND RISK OF HORSES.

293. The forty cents per day to which the mounted volunteer is entitled for the use and risk of his horse, includes the expense of shoeing.—*Vol. 6, p. 291.*

294. The 2d section of the act of March 19, 1836, chap. 44, provides that "the officers of all mounted companies, &c., shall be entitled to forty cents per day for the use and risk of each horse." This provision includes staff officers who hold the rank of company officers, but does not include field officers of the line.—*Vol. 7, pp. 116, 422; Vol. 8, p. 180; Vol. 10, p. 338.*

295. Under the 2d section of the act of March 19, 1836, chap. 44, mounted officers of a regimental staff of volunteers or militia, and non-commissioned officers whose duties require them to be mounted, are entitled to forage and pay for the use and risk of their horses.—*Vol. 6, p. 549.*

296. No allowance can be made to a private volunteer in the military service for the use and risk of his horse, unless he shall have kept himself provided with a serviceable horse during the time for which pay is claimed.—*Vol. 13, p. 284.*

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#### VOLUNTEERS AND MILITIA.

297. Under the act of May 13, 1846, the pay of volunteers does not commence until they are mustered into service.—*Vol. 13, p. 247; Vol. 14, p. 148.*

298. When an organized corps of militia is ordered out under the laws of the United States, only the number and description of officers to which such corps is entitled by the law of May 8, 1792, “establishing an uniform militia,” can be paid.—*Vol. 12, p. 19.*

299. The allowance to the volunteer for clothing, under the 9th section of the act of June 18, 1846, chap. 28, is “\$3 50 per month, during the time he shall be in the service of the United States.—*Vol. 11, p. 462.*

300. The act of 2 March, 1849, chap. 79, allows to each volunteer, (or his legal representatives,) in the military service of the United States in Mexico, who has been a prisoner of war, forty cents per day in lieu of subsistence, during the whole time of his imprisonment.—*Dec. Sec. Compt., 1849.*

301. There is no law or regulation requiring volunteers or militia, when received into the service of the United States, to be under oath. No charge, therefore, can be admitted for administering an oath in such cases.—*Vol. 7, p. 118; Vol. 13, p. 131.*

302. The Resolution of March 3, 1847, and the act of June 2, 1848, refunding to States and individuals amounts advanced to volunteers, do not authorize any allowance for pay to volunteers, beyond the monthly pay given by the laws of the United States.—*Vol. 12, p. 452.*

303. The 2d section of the act of August 11, 1842, providing for the settlement of the claims of the State of Georgia for the service of militia, is to be considered as limiting the allowance to be made under the 10th section, to the amount for which the United States would have been liable if the volunteers and militia mentioned in said section had been duly called into the service of the United States, and been regularly received and duly mustered therein. And the law does not embrace cases where the volunteers or militia were so received and mustered.—*Vol. 10, p. 255.*

[*See par. 92, 96, 101, 143, 157, 158, 186, 187, 189, 243, 256, 271, 273, 274, 286, 287, 288, 294, 295, 296, 297.*]

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#### WOMEN.

304. By the law of 16 March, 1802, women allowed to any particular corps, are not to exceed the proportion of four to a company. No greater number can be allowed at the stations of Washington and Norfolk.—*Vol. 9, p. 538.*

## INDIANS.

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305. In all cases where claims arise under an Indian treaty, and are payable by the War Department, the claimants being Indians, payments must be made to the Indians in person, and not to an attorney.—*Vol. 12, p. 510.*

306. In making payments to Indians, it has long been the practice to recognise the right of the father to receive for his minor children.—*Vol. 14, p. 79.*

307. Presents given to Indians, should be issued in the presence of the interpreter, or some other respectable person, whose certificate of the facts should be attached to the abstracts of issues.—*Vol. 3, p. 81.*

308. Payments under the Appropriation act of Sept. 30, 1850, of the amount of the awards of General W. B. Mitchell, cannot legally be made under powers of attorney or assignment, executed prior to the passage of that act.—*Vol. 14, p. 154.*

309. Under the 3d article of the Cherokee Treaty of 1846, all allowances for reservation should be paid by the United States, and are not a proper charge upon the Cherokee fund.—*Vol. 13, p. 54.*

310. Accounts for meals, horse feed, &c., furnished to Indians visiting agencies, and all unvouched expenditures

while travelling, must be supported by the oath of the person making out the same, unless satisfactory certificates of disinterested persons can be obtained as to their correctness. But when supplies are furnished or expenses incurred by a regular disbursing officer, his certificate on honor, as to the correctness of his account, will be sufficient.—*Vol. 3, p. 273.*

311. The abstract of issues to Indians, should be supported by the certificate of one or more respectable and disinterested persons, that the articles embraced therein were delivered to the Indians in their presence; or when, from the circumstances of the case, such certificates cannot be obtained, the certificate on honor of the agent that all the provisions embraced in the abstract were issued to the Indians must be annexed.—*Vol. 3, p. 276.*

312. When expenditures are incurred for carrying into effect particular stipulations of any Indian treaty, such as for cattle, farming utensils, mechanics, tools, school masters, agriculturalists, laborers, &c., separate abstracts of such expenditures must be made, and the separate and distinct articles of such treaty or appropriations must be noted on the vouchers, or on the abstract, that the expenditures may be carried to their proper heads.—*Vol. 3, p. 277.*

313. When the commissioners under the 17th article to adjudicate claims for Indian reservations arising under the treaty with the Cherokees, of 1835–6, appointed appraisers to examine and report the value of a reservation for which a claim had been presented to them, and before the appraisers had made their report the board was dissolved; held that the action of the commissioners amounted to a sufficient adjudication to authorize the payment of the

claim under the act of 2 July, 1836, if afterwards found to be valid.

But no interest can be allowed by the accounting officers, upon such a claim, unless under special authority of Congress.

None of the appropriations contained in the act of July 2, 1836, are applicable to the payment of claims for Indian Reservations, under the treaty with the Cherokees of 1835-6.

When a legal contract has been entered into between the claimant and an attorney, for the prosecution of such a claim, for a contingent fee of twenty per cent. upon the amount ultimately allowed, and an assignment to the attorney of that proportion of the amount allowed is included in the contract, and authority given him to receive it at the Treasury, such agreement will be recognised as binding by the accounting officers after the consideration has been fulfilled, unless it is impeached by such evidence as would be sufficient to invalidate it at law or in equity.

But when a contract is executed between the claimant and an attorney, for the payment by the former to the latter of twenty per cent. of the amount ultimately allowed upon the claim, in consideration of services to be rendered in prosecuting it, but without making any particular assignment of, or lien upon, the particular sum allowed, or authorizing the attorney to receive any part of it from the Treasury in payment of the compensation agreed on, such contract will not be enforced by the accounting officers.

The last clause in the Indian Appropriation bill of Aug. 30, 1852, prohibits the payment of any money in that act appropriated, under any pre-existing contract whatever, made by an Indian with an agent or attorney.

This provision is constitutional.

And applies to the case of a white man claiming in behalf of, and for the benefit of, an Indian wife and children.

And authority given by the act for the payment of a claim out of previously existing but inapplicable appropriations, is an appropriation of money within the meaning of the last section of the act.

And the direction in that act, that a claim shall be paid as previously "allowed by the Second Auditor," does not take it out of the operation of the last section, notwithstanding the Auditor had made twenty per cent. of the allowance payable to the attorney in pursuance of the contract.—*Vol. 15, pp. 272, 311, 398.*

*The four last points sustained by the opinion of Attorney General Crittenden, September, 1852.*

314. An Indian agent is entitled to his salary and allowances, from the time he takes the oath of office and commences the performance of duty.

His compensation must cease with his term of office, and if he remain at the agency afterwards to assist his successor, he cannot charge the Government for his services.—*Vol. 15, p. 260.*

315. The final settlement of the accounts of Indian agents is not within the exclusive jurisdiction of the Commissioner of Indian Affairs. The action of that officer is administrative merely, and the duty of final revision and settlement belongs to the accounting officers.—*Vol. 15, p. 442.*

316. The action of the Department of the Interior upon claims against Indians, arising under the 17th section of the act of June 30, 1834, is final, and cannot be revised by the accounting officers.—*Vol. 15, p. 343.*

317. When a distillery in the Indian country is destroyed as a nuisance by the Indian agent, the accounting officers have no power to allow damages to the owner.—*Vol. 11, p. 221.*

318. The disposition of the Indian annuities is entirely within the control of the Secretary of the Interior; and his direction as to the persons to whom, and the time and manner in which they are to be paid, will be regarded as final by the accounting officers.—*Claim of January, 1853.*

[*See par. 105.*]

# MISCELLANEOUS SUBJECTS.

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## APPROPRIATION.

319. When the Second Comptroller of the Treasury is directed by a warrant of the Secretary of the Treasury to transfer a sum of money from one appropriation to another, and the transfer is made in obedience to such warrant, he cannot without similar authority, restore the money to the appropriation from which it was taken.—*Vol. 10, p. 341.*

320. The expenses of courts martial in any branch of the public service, must be charged upon the proper appropriation for that branch or department.—*Dec. Sec. Compt., Oct. 8, 1850.*

321. The appropriation in the River and Harbor bill of August 30, 1852, may legally be applied to the payment of claims accrued prior to the fiscal year 1852-3, if fairly within the provisions of the act. But the approval of the Secretary of War should be obtained, before money is so applied.—*Vol. 15, p. 429.*

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## BILLS OF EXCHANGE.

322. While the first endorsement of a bill remains blank, the right of the holder to recover as the immediate as-

signee of the first endorser, is not restricted by subsequent endorsements. Even if those endorsements are all in full, so that the holder could deduce a regular title through them, he is not bound to do so, but may strike them all out, and claim simply under the first blank endorsement.—*Vol. 13, p. 157.*

323. The drawer of a bill of exchange ought not to be required to make payment, unless the instrument itself furnish the proof by endorsement, that the claimant is legally entitled to receive it.—*Vol. 13, p. 198.*

324. When a draft on the Government is lost, not having been paid, the amount is to be paid on the presentation of proper proof under oath, of the loss. The proof must state that the draft is lost, and must also state, as far as is known, how it was lost; and whether it had been negotiated, and if so, to whom.—*Vol. 13, p. 126.*

325. It has been the uniform practice in the settlement of accounts, not to allow interest or damages on protested bills, drawn and protested under any circumstances whatever.—*Vol. 2, p. 1.*

326. The costs on protested bills are not to be paid by the Government, except under special act of Congress.—*Vol. 11, p. 497; Vol. 10, p. 481.*

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#### BILL OF LADING.

327. The master is presumed to have a knowledge that the bill of lading is correct when he signs it, and as it contains his acknowledgment that the articles described have been shipped on board his vessel, he is answerable for them according to their description in the bill of lading,

and in compliance with his contract. He may, however, be permitted to show a mistake, as that some of the packages did not contain what they were represented to contain.—*Vol. 12, p. 137.*

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### CLAIMS AND EVIDENCE.

328. Where the statement of a Government officer conflicts with that of a claimant in regard to a transaction equally within the means of knowledge of both parties, and there is no additional proof on either side, the Government will act upon the evidence of the officer.—*Vol. 15, p. 20.*

329. No parol testimony can be received at the Treasury to vary, add to, or control the terms of a written contract. On this subject, the legal rule applies. And where proposals for a contract are furnished, they cannot be resorted to for the purpose of adding to a contract subsequently executed thereon, a feature not contained within it.—*Vol. 15, p. 151.*

330. The accounting officers are not authorized to go behind the decisions of their predecessors, except on the production of new and conclusive testimony.—*Vol. 3, p. 85.*

331. The accounting officers have no authority to allow a claim which has been fully examined and rejected by their predecessors, unless, upon the production of new evidence, which removes the objection formerly existing.—*Vol. 15, p. 161.*

332. The law requires that all claims against the United States shall be settled at the Treasury Department. No officer of the Government therefore, has a right to submit a claim to the decision of referees.—*Vol. 5, p. 1.*

333. A party who prefers a claim against the Government which is not passed by the accounting officers, and elects to resort to Congress for relief, must abide by his election, and fail or succeed in his application for redress before that body.—*Vol. 11, p. 272.*

334. After a claim has been rejected by Congress on its merits, it cannot be considered by the accounting officers of the Treasury.—*Vol. 9, p. 390.*

335. A claim against the United States in the hands of an assignee of the original creditor, is subject to all the equities existing between the assignor and the United States; and those equities, so far as they are in favor of the United States, must be first satisfied, before the assignee can reap the benefit of the assignment.—*Vol. 10, p. 53.*

336. A claim that has lain dormant for twenty-five years, cannot be allowed on evidence which is in direct conflict with that furnished by the records of the army, at the time when the claim purports to have originated.—*Vol. 15, p. 89.*

337. The act of January 25, 1828, requires that no money shall be paid to any person for his compensation, who is in arrears to the United States, until such person shall have accounted for and paid all sums for which he may be liable.—*Vol. 11, p. 224.*

338. When an account is presented against the United States which purports to have been due for the term of twenty-eight years, the legal presumption arising from the lapse of time is, that the account has been paid, and unless

that presumption can be removed, the account is not to be allowed.—*Vol. 10, p. 287.*

339. No allowance can be made by the accounting officers, for property impressed into the service of the United States, nor for any special damages done to individuals or their property, by the troops of the United States.—*Vol. 8, p. 338.*

340. The owner of certain wagons left them on public ground in such a situation as to lead the subordinates of the Quartermaster's Department to suppose that they belonged to the United States. They were used in the public service, and the owner acquiesced without notice or complaint.

Held, that he had no legal claim on the Government for the use of the wagons, nor for the damage which they sustained.—*Vol. 15, p. 156.*

341. When a purchase is made by an officer of the United States, authorized to make purchases, he is to be considered, in making such purchase, as the agent of the Government, and the party from whom he purchases is not bound to show what disposition has been made of the property.—*Vol. 6, p. 442; Vol. 15, p. 64.*

342. When a purchase is made by a person or officer claiming to be duly authorized, but not so in fact, the Government is not bound by the contract, unless the vendor shows, that the property purchased has been actually used in the public service.—*Vol. 6, p. 442.*

343. When an officer exceeds his powers, he becomes individually responsible, and cannot bind the Government by his illegal contract.—*Vol. 11, p. 173.*

344. The United States are not liable for property illegally destroyed by private soldiers not acting under or-

ders. And no voucher for payment of such damages by a disbursing officer, can be allowed in the settlement of his accounts.—*Vol. 7, p. 209.*

345. Payment of any sum, due from the United States, to an officer who has become insane, can be made to his legally appointed guardian only.—*Vol. 11, p. 200.*

346. No person, but a parent, has a right to receive money belonging to a minor, until he has taken out from the proper court, letters of guardianship, and a certificate that they have been issued must be sent to the Auditor's office, before the amount due a minor can be paid to the guardian.—*Vol. 6, p. 166.*

347. By law, the signature of partners to a sealed instrument will not be binding if made in the name of the firm. In such a case, each partner should sign and seal for himself in his individual capacity, and not in the name of the firm.—*Vol. 7, p. 101.*

348. In cases where a charge is made by one person, for a payment made by him to another, for freight, wharfage, drayage, or any other purpose, the particulars of the charge must be fully specified in the body of the account, and a receipt from the person to whom the payment is made, must be annexed as a subordinate voucher.—*Vol. 3, p. 235.*

349. The necessity of employing counsel, and the amount to be paid for their services, are subjects for the decision of the Executive Departments of the Government.—*Vol. 9, p. 2.*

350. Claims in favor of States for services of their troops, unless otherwise directed by Congress, must be adjusted in conformity with the rules and rates of allow-

ance prescribed by law for volunteers mustered into the service of the United States.—*Vol. 15, p. 295.*

351. Claims in behalf of States for services of their troops, must be prepared for presentation at the Treasury, at the expense of the claimants. And expenditures for clerk hire, stationary, &c., incurred in preparing and presenting such accounts, will not be allowed.—*Vol. 15, p. 296. This decision confirmed by Attorney General Crittenden.*

352. When the compensation of an officer is fixed by law, no head of a Department, or accounting or executive officer, can increase the compensation. Such power belongs to Congress only.—*Acting Purser Goldsborough's case, April, 1840.*

353. No clerk employed in the State, Treasury, War, or Navy Departments, can, as agent or attorney, perform any services for individuals relating to claims against, or settlement with, any of the public offices.—*Letter signed by all the Heads of Departments, May 27, 1818. Recognised by Sec. Treas. as in force, September 11, 1835.*

354. In cases where periods of service rendered by those employed at a stipulated monthly rate of compensation, extend to and embrace fractional parts of any month, thirty days will be assumed and regarded as constituting the entire duration of such a month, in lieu of the twenty-eight, twenty-nine, or thirty-one calendar days it may contain, and the proportional allowance of compensation therefor will be computed accordingly. But for any full and entire month's service performed by persons so employed, they will be allowed and paid according to such stipulated monthly rate, without reference to the number

of days the month may contain.—*Dec. Sec. Compt., September 5, 1848.*

355. Interest can in no case, be allowed by the accounting officers, upon claims against the Government, either in favor of a State or an individual.

But, in cases where the claimant has been compelled to pay interest for the benefit of the Government, it then becomes a part of the principal of his claim, and, as such, is allowable. Such is the case of a State which has been obliged to raise money upon interest for the suppression of hostilities against which the United States should protect her.

In such cases, the amount of interest actually and necessarily paid will be allowed, without reference to the rate of it.—*Vol. 15, pp. 34, 280.*

356. The identity of a claimant under a soldier's will, must be established by other evidence than his own affidavit. The possession by the claimant of a copy of the will, purporting to be certified as such by one of the witnesses, does not constitute evidence that can be legally regarded.—*Vol. 15, p. 3.*

357. When a witness to a receipt for money signs by mark, a witness to the signature is in all cases required.—*Vol. 11, p. 183.*

358. The mark of a witness, to the signature of another, who merely affixes his mark to a receipt, is not deemed a sufficient compliance with the regulation.—*Vol. 10, p. 350.*

359. Telegraphic reports are inadmissible as evidence before the accounting officers of the Treasury.—*Vol. 12, p. 453.*

360. A notary public is subject to the same rule as other

magistrates. All magistrates must obtain the necessary certificate from the clerk of some court of record.—*Vol. 4, p. 330.*

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## CONSTRUCTION OF STATUTES.

361. It is an established rule, that a retrospective operation is not to be given to any statute, but upon the clearest evidence, derived from its language, that such was the intention of the legislature.—*Vol. 15, p. 190.*

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## CHARTER PARTY.

362. The contract of affreightment in a charter party is an entire contract, and unless fully performed by the delivery of the whole cargo, no freight can be legally claimed. The delivery of the whole cargo is a condition precedent to the recovery of freight.—*Vol. 11, p. 250.*

363. When a vessel is unseaworthy when chartered, the owners have no legal claim for any charter money, it being an implied engagement on their part, that she was, at the time of chartering, and should be kept during the charter, in a seaworthy condition.—*Vol. 12, p. 229.*

364. If a ship be chartered at a specific sum for the voyage, and she loses part of her cargo by a peril of the sea, and convey the residue, no freight can be claimed under the charter party.—*Vol. 13, p. 189.*

## COMPTROLLER'S OFFICE.

365. Bonds are filed with the Second Comptroller merely for safe-keeping ; but he has no agency or authority relating to their acceptance or approval, the sufficiency of the sureties, or the penal sum for which they shall be given.—*Vol. 8, p. 164.*

366. The Second Comptroller of the Treasury has no authority to give up a bond to the obligors, or any one else, except by direction of the Head of the department under whose authority the contract was made.—*Vol. 10, p. 266.*

367. The Second Comptroller is not authorized to permit the accounts and papers committed by law to his charge, to be transported to the committee rooms of Congress.—*Vol. 2, p. 34.*

368. By the 5th section of the act of March 3, 1817, chap. 45, it is made the duty of the Auditor, "to receive from the Comptroller the accounts which shall have been finally adjusted, and to preserve such accounts with their vouchers and certificates." When this is done, such papers are no longer subject to the authority of the Comptroller.—*Vol. 10, p. 408.*

369. The disbursement of the contingent fund of the Second Comptroller's office, is considered a part of the duty of the clerk, and does not entitle him to any extra compensation, either in the form of commissions or in any other manner.—*Vol. 14, p. 82.*

370. A clerk in one of the Departments cannot lawfully receive, for the time, his regular or fixed salary, and receive a higher compensation for performing other duty.—*W. P. Moran's case, 1850.*

## CONTRACTORS.

371. A contract by an engineer officer with a Senator of the United States for the labor of his slaves on public works, whether in writing or by parol, is void under the act of April 21, 1808.—*Vol. 15, p. 4.*

372. No parol evidence whatever can be received to vary or control a written contract with the Government. Its construction must be sought in its terms. Nor can the advertisements or proposals which preceded its execution form any part of the agreement, unless referred to and adopted in the contract itself.—*Vol. 15, p. 288.*

373. When a contract is made for a particular service, it is not in the power of any officer of the Government, to make additional allowances for the performance of that service, beyond those specified in the contract.—*Vol. 12, p. 199.*

374. Where a contractor verbally agrees with the agent of the Government to extend the time of delivery, specified in his contract, he cannot charge the Government, with any additional expenses thereby incurred, unless so specified at the time of the agreement.—*Vol. 8, p. 539.*

375. It is not in the power of the Executive branch of the Government, to liquidate and pay damages which a contractor may have sustained by reason of a violation of the contract on the part of the United States. If he has been damnified, Congress alone can redress the injury.—*Vol. 9, p. 342.*

376. Where actual and necessary expenses have been incurred and lost by a contractor in carrying out, in good faith, a contract with the Quartermaster's Department, made within the scope of their authority, and the contract

has been subsequently broken off by the Government before the party became entitled to payment under it, the Quartermaster's department is authorized to reimburse to the contractor the expenses so incurred and lost.

But no allowance can be made by that Department in such a case, for the loss of anticipated profits in the completion of the contract. Such claim, if it exist, must be the subject of an application to Congress.—*Vol. 15, p. 340.*

377. No payment is to be made to a contractor where it appears that he is liable to the United States, under the same contract, to a larger amount than the sum claimed by him.—*Vol. 12, p. 205.*

378. Payment may be properly withheld from a contractor until the amount of his liability for the non performance of his contract shall have been ascertained.—*Vol. 12, p. 200.*

379. When contractors have become legally liable for a breach of their contract, Congress only, has the power to relieve them from that liability.—*Vol. 13, p. 340.*

380. If an account be predicated on a contract, reference should be made to the contract in the body of the account, and the original should be transmitted with the first account arising under it. Vouchers, referring to a verbal contract only, without a specification of particulars, are inadmissible.—*Vol. 3, p. 235.*

381. No claim can arise out of the breach by the Government of a contract to accept goods contracted for, where it appears that the claimant never procured the goods, or had them ready for delivery, in pursuance of his contract, unless he has incurred expenses in preparing for such delivery.

A mere offer to fulfil, without having the means to do so, is no fulfilment of such a contract, even though the offer is refused.—*Vol. 8, p. 573.*

382. When a bond is given for the delivery of specific articles, at a certain time and place, in payment of a debt, the designation and tender of such articles, in accordance with the contract, is a discharge of the debt, and the property in them passes to the creditor.—*Vol. 8, p. 537.*

383. But it is doubtful whether this principle, especially, so far as regards the change of property in the goods tendered, applies to contracts of purchase.—*Vol. 8, p. 538.*

384. A disbursing officer of the United States is not liable as the garnishee of contractors employed by him, in behalf of the Government. But if adjudged so liable, by a court of competent jurisdiction, he may safely pay over the amount due the contractor, in accordance with the judgment, and a certified copy of the record and the receipt of the plaintiff, will be a sufficient voucher at the Treasury.—*Vol. 8, p. 133.*

385. An assignment of the payments due under a contract with the United States, accompanied by due notice to the proper officer, is binding upon the Government, if not prohibited by the terms of the contract. And if the contractor has subsequently just ground for invalidating his assignment, he must proceed in the same manner as though the contract assigned were with an individual. But the mere rescinding of such an assignment is not sufficient notice to the Government.—*Vol. 15, p. 294.*

## DECEASED CLAIMANTS.

386. In order to show that the person claiming money due a deceased person from the United States, has a legal right to receive it, he should produce and file with the disbursing officer making the payment, the original letter of administration, or a copy thereof duly certified, or an official certificate from the clerk of the court from which it issued, that it appears by the records of said court that he has been duly appointed, and is legally empowered to act as administrator on the deceased person's estate.—*Vol. 12, p. 184.*

387. Where the balance due a deceased person is paid to an administrator deriving his authority from a court of competent jurisdiction, though obtained by fraudulent means, payment will not be made again when claimed by the true representative of the deceased. But where payment is made to an administrator whose authority is derived from a court possessing no power to grant administration, the legal representatives of the deceased have a valid claim on the Government for the money. When the jurisdiction of the court granting the power is denied, and the question is one of fact merely, such as the residence of the deceased, &c., the most conclusive evidence of the want of jurisdiction will be required.—*Philip Robinson's case, April 10, 1851.*

388. In the case of a gratuity granted by act of Congress to the relatives of deceased persons, the collateral relatives, whether of the whole or half blood, should participate equally in the order pointed out in the act.—*Dec. Sec. Compt., November 19, 1830.*

389. When the amount due from the United States to a deceased person has been paid to one claiming to be the

only brother of the deceased, upon proof that was then deemed satisfactory that he was the only brother, and that there was no widow, and another claim for the money is presented by a person claiming to be the widow, the clearest evidence should be required of the fraud and perjury of the proof on which payment was made, of the absence of all knowledge of it on the part of the second claimant, and of her right as the widow, before the money is paid again.—*Vol. 15, pp. 11, 173.*

390. Questions as to the right of the whole or half blood, to inherit balances due deceased persons, will be determined in conformity with the law of the State, of which the deceased was a citizen.—*Sergeant W. C. Baker's case, 22 September, 1849.*

391. The Government do not recognise an administrator appointed without the consent of the heirs of the deceased—*Vol. 3, p. 37.*

392. Where arrearages are claimed by an executor, for the benefit of others, either the will should be probated in the county where the deceased lived, or those interested in the trust should signify their assent, that the amount should be paid to the executor without probate of the will.—*Vol. 15, p. 73.*

393. Payment of an amount due a deceased person, for articles purchased by the Navy Department, may be made to the guardian of the children of the deceased, where it appears by the certificate of the probate court, that the wards of the guardian are the sole heirs, and also that the debts of the deceased have been paid, and the estate closed by a settlement of the administrator's account; otherwise, payment should be made to the administrator.—*Vol. 14, p. 206.*

## DEMURRAGE.

394. Where there is any unreasonable delay in the delivery of a cargo, and such delay is occasioned by the consignee or his agents, the vessel may legally claim indemnity, though no provision for demurrage is inserted in the contract.—*Vol. 12, p. 274.*

395. Demurrage, strictly speaking, is only allowable when it is expressly provided for in the charter party. In cases where the time to be allowed for discharging the cargo is specified, but no rate of compensation for additional delay is fixed, the owners of the vessel are entitled to damages for such delay, in the nature of demurrage, and to be estimated on the same principles.

But these damages must be confined to the particulars usually included in demurrage, and cannot be extended to compensation for remote consequences, produced in the execution of other and subsequent contracts, by the delay.

And where a charter party is executed with an officer of the Quartermaster's department, no claim for damages by the shipowner can be entertained or paid by that department, except such as arises from the act of the officers of that department, or a breach on their part, of some stipulation of the contract.

Damages sustained by the owner, from the improper conduct of the United States' collector at the port of delivery, must be the subject of an application to Congress.—*Vol. 15, p. 204.*

## DISBURSING OFFICERS.

396. All officers, of every grade, whether in active service or not, who shall receive public money which they are not authorized to retain as salary, pay, or emolument, are required to render their accounts with the vouchers, quarter-yearly to the proper accounting officers of the Treasury, within three months at least after the expiration of each successive quarter.—*Vol. 6, p. 99.*

397. All accounts accruing during any quarter, should, if practicable, be adjusted and paid during the current quarter, or within so short a period after its termination as to be embraced in the accounts for that quarter.—*Vol. 3, p. 235.*

398. In all cases where money is advanced by one disbursing officer to another, the officer making the advance, must produce the receipt of the receiving officer, if practicable, or he will not receive credit at the Treasury.—*Vol. 5, p. 600.*

399. Original vouchers must be produced to the accounting officers. Duplicates cannot be admitted, unless accompanied by satisfactory evidence of the loss or destruction of the originals.—*Vol. 9, pp. 277, 287, 367, 418.*

400. In all cases where articles are purchased, the date of the purchase and certificates of inspection and receipt of the articles by the proper officers, are required. And if the purchase be made under a contract, this fact, with the date of the contract, should be stated in the voucher, and the contract itself should be filed in the office of the Second Comptroller; and if it be by open purchase, the usual certificate in such case should be given, in addition to those of inspection and receipt.—*Vol. 11, pp. 489, 495.*

401. The specific purpose for which all articles are purchased or used, should be distinctly noted on the vouchers, to enable the accounting officers to designate the appropriation upon which they should be charged.—*Vol. 9, pp. 277, 299, 367.*

402. In all accounts for articles purchased, the date of each purchase, the name, number, price, &c., of each article, must be distinctly specified in the accounts. All receipts for payments of money must express the amount paid, in words legibly written at full length.—*Vol. 9, p. 367.*

403. Accounts for the expenditures of disbursing officers must bear dates, and all receipts upon vouchers must bear the date when they were written.—*Vol. 9, p. 38.*

404. When vouchers are produced which appear to have been paid and receipted prior to the rendering a former account, an explanation is required why said vouchers were not produced with, and included in, that account.—*Vol. 13, p. 179.*

405. The labor of slaves must be paid for to their owners or their agents, or if they purchased their time of their masters, proof of that fact, with evidence of payment by a witnessed receipt or mark, will be satisfactory.—*Vol. 9, p. 61.*

406. The receipts which are annexed to accounts should express the sums paid in words written out in full, and not by figures, and they should state the name of the person from whom, and the date when, the money is received.—*Vol. 3, p. 236.*

407. Accounts for postage of letters on public service must be accompanied by a certificate from the officer sending or receiving them, setting forth that the postages

charged, are due exclusively for letters on public business committed to their charge.—*Vol. 3, p. 235.*

408. All money drawn from the Treasury, is, by the accounting officers, to be considered as equivalent to specie and charged on the books of the Treasury as such. There is no law by which they can take notice of depreciated currency.—*Vol. 10, p. 145, 461 ; Vol. 6, p. 557.*

409. When a disbursing officer purchases specie without authority from the head of the Department, his charge for the premium paid, will be disallowed.—*Dec. Sec. Compt., June 15, 1839.*

410. Treasury notes placed in the hands of a disbursing officer to meet public liabilities, do not begin to bear interest until actually disbursed by such officers in payment.—*Vol. 11, p. 393.*

411. When a disbursing officer pays out a Treasury note, he must pass it for the value of the principal and the interest then due upon it.—*Vol. 6, p. 362.*

412. A disbursing officer is not authorized in any case, to issue a Treasury note at less than its par value, nor to exchange it at a discount for any other funds.—*Vol. 6, p. 390.*

413. When a disbursing officer receives from Government, Treasury notes which are at a premium in current funds, the officers and men, paid by him, are entitled to that premium, if the notes are sold and payment made in currency.—*Dec. Sec. Compt., June, 1838.*

414. Treasury notes made under the act of Oct. 12, 1837, and placed in the hands of disbursing officers to meet public liabilities, have no legal existence while in his hands, and are to be considered as *issued* when they are by him delivered in payment, and not till then. No in-

terest is to be added when thus delivered.—*Vol. 9, p. 195; Vol. 6, p. 491.*

415. By the act of July 27, 1842, in all payments by or to the Treasury of the United States, whether at home or abroad, when the value of the pound sterling is to be computed, it shall be deemed equal to \$4.84. An officer in a foreign country who draws by permission on an agent of the Government in sterling, and receives in payment the currency of the country where he may be, cannot be paid for any loss on that currency when converted into dollars.—*Case of Surg. Gilchrist, 1848.*

416. When the transportation of specie becomes requisite from the circumstance of the Treasury draft being drawn upon a place other than that at which the agent resides, the necessary expenses are usually defrayed by the Government.—*Dec. Sec. Compt., July 6, 1848.*

417. A disbursing officer is not authorized to effect insurance on Government funds which he transfers from one point to another, at the expense of the United States.—*June 6, 1848.*

418. When an agent for the United States, purchases articles in England, for the use of the Government, to be paid for *there*, on an adjustment of the account *here*, the exchange is to be included, according to the current rate at the time of making the payment.—*Vol. 7, p. 33.*

419. The accounting officers have no power, in any case, to credit a disbursing officer with payments not authorized by law. And in all instances of over payments, mistakes, &c., application for relief must be made to Congress.—*Vol. 15, p. 290.*

420. Accounting officers are not authorized to make extra allowances, either in the form of commissions or other-

wise, without the sanction of the Head of the Department.—*Vol. 12, p. 42.*

421. It is not within the power of the accounting officers, to allow a per centage to officers for disbursing funds not properly appertaining to their department.—*Vol. 7, p. 49.*

422. A consul is entitled to a commission only on the sum actually disbursed, after deducting the premium, if any, paid on the funds in which the disbursements were made.—*Dec. Sec. Compt.*

423. No provision having been made by law for cancelling or discharging official bonds to the Government, the uniform practice has been for the Government to retain the custody of the bonds, although the office of the principal may have expired, and his accounts may have been satisfactorily settled.—*Vol. 14, p. 199.*

424. An omission to execute a bond in the presence of witnesses, does not render it so informal as to invalidate it. If the handwriting of the obligor can be proved, the bond is as valid without, as it would be with witnesses.—*Vol. 14, p. 66.*

425. The omission to describe the “office,” in the condition of a bond, is a fatal defect.—*Vol. 14, p. 78.*

426. The official bonds of disbursing officers or agents, which are filed in obedience to law, in the office of the Second Comptroller, are not surrendered on the final settlement of their accounts—*Vol. 11, p. 332; Vol. 10, p. 8.*

427. The Comptroller of the Treasury has no power to relinquish security, or to require new or additional security.—*Vol. 11, p. 329.*

428. The act of January 25, 1828, points out the only mode by which a claimant can require a suit to be instituted against him, for the settlement judicially, of ques-

tions arising between him and the accounting officers. If an officer is in arrears, his pay will be stopped, and he then has a legal right to demand a suit. But if he is not in arrears, no suit can be brought by the United States with or without his consent.—*Vol. 9, p. 90.*

429. When the account of a disbursing officer is settled at the Treasury, and suit is brought against him for the balance found due, and the matter is afterwards compromised by the entry of a judgment in favor of the United States, by consent, for an agreed amount less than the balance due, the judgment is conclusive as to all the items on both sides of the account as settled. And items in favor of the officer, embraced in the account, cannot afterwards be paid him at the Treasury, even though they were improperly disallowed in the original settlement.—*Vol. 15, p. 347.*

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#### DISTRICT ATTORNEYS.

430. The act of August 23, 1842, does not prohibit special allowances to District Attorneys for services not included in their official duties.—*Vol. 13, p. 50.*

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#### FREIGHT.

431. No claim for freight can be admitted until it shall be made to appear, that the contract has been fulfilled on the part of the owners; that is, until the goods have been

delivered in good order and condition as when shipped, or injured by the perils of the sea.—*Vol. 12, p. 38.*

432. If a ship be disabled from completing her voyage, the owner may still entitle himself to the whole freight, by forwarding the goods by some other means, or by repairing his own vessel and completing the voyage, if that be done within a reasonable time.—*Vol. 12, p. 59.*

433. Pro rata freight only is due when the ship, by inevitable necessity, is forced into a port short of her destination, and being unable to proceed on her voyage, the goods are then voluntarily accepted by the shipper.—*Vol. 10, p. 94; Vol. 12, p. 178.*

434. When a part of the cargo is damaged in consequence of the fault of the master or his crew, from their negligence, carelessness, or improper conduct in regard to the stowage and preservation of the cargo, no freight can be legally claimed on the damaged part of the cargo, but the shipper has a legal claim on the shipowner for the injury sustained.—*Vol. 11, p. 428.*

435. If, on the arrival of a vessel at her port of discharge, due notice is given to the consignee to receive the cargo, and its discharge from the vessel and delivery is prevented by the consignee, the freight is earned within the true and legal construction of the bill of lading.—*Vol. 11, p. 426.*

436. When goods arrive at the port of destination in so damaged a state as to be of no value, but not owing to any fault in the owner or master of the vessel, the owner of them is not at liberty to abandon them for the freight, but the shipowner is entitled to recover full freight for the voyage.—*Vol. 12, p. 246.*

437. Salvage is a loss, to which, by law, vessel, freight,

and cargo are liable to contribute, therefore, the owners of the vessel are entitled to freight only on that part of the cargo which came into the possession of its owner or his agent, or in other words, that for so much of the property saved from the wreck as was required to pay salvage, no freight is chargeable.—*Vol. 8, p. 47.*

438. All accounts for freight must be accompanied by bills of lading and proof of delivery to the consignee, viz., his receipt for the articles delivered.—*Vol. 9, p. 368.*

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#### GENERAL AVERAGE.

439. The obligation to contribute towards a loss, sustained by some for the benefit of all, does not depend on the terms of any written instrument between the parties, but upon a general rule of maritime law, and the rule is operative in all cases, unless excluded by the express stipulation of the parties.—*Vol. 8, p. 279.*

440. Property belonging to the Government must contribute towards general average, under the same circumstances, and to the same extent, as that of private individuals.—*Vol. 8, p. 279.*

441. The sound value of articles, on which contribution is to be apportioned, is to be estimated at the place of delivery, deducting freight and charges.—*Vol. 8, p. 281.*

442. Where a part of the cargo mentioned in the bill of lading is thrown overboard for the safety of the vessel and other parts of the cargo, that loss should be remunerated by general average, assessed on vessel, freight, and cargo saved.—*Vol. 11, p. 424.*

443. Whatever be the nature of the injury, whether arising from voluntary sacrifice or the perils of the sea, the wages and provisions of the crew, from the time of putting away for the port, and every other expense necessarily incurred during the detention for the benefit of all concerned, are to become as general average.—*Vol. 11, pp. 439, 508; Vol. 8, p. 280.*

444. When a vessel is accidentally stranded in the course of her voyage, and by labor and expense is set afloat and completes her voyage with her cargo on board, the expense bestowed for this object, as it produces benefit to all, is a charge upon all, according to the rules of apportioning general average.—*Vol. 12, p. 366.*

445. The settled rule for ascertaining the contributory value of freight, is, to deduct one-third from the gross freight.—*Vol. 8, p. 280.*

446. The expenses of repairing the ship, if not occasioned by voluntary sacrifice, are not a subject of general average.—*Vol. 8, p. 280.*

447. Where an injury arises from the perils of the sea, and the ship is compelled to go into port to refit, the expense of towing her into port, and the wages and provisions of the crew during the detention, constitute the subject of general average.—*Vol. 9, p. 367; Vol. 8, p. 280.*

448. When a portion of the spars, rigging and tackle, of a vessel are voluntarily sacrificed for the preservation of vessel and cargo, the loss is properly reimbursable by general average.—*Vol. 12, p. 18.*

449. Pilotage and port duties are items properly included in the amount of losses to be made good by contribution.—*Vol. 12, p. 131.*

450. When a ship is voluntarily stranded to prevent the

utter destruction of both ship and cargo, the damages resulting therefrom are to be borne as general average assessed on the ship, freight, and cargo.—*Vol. 11, p. 255.*

451. When the ship and cargo suffer damage from the casualties of the sea and not from voluntary sacrifice, for the preservation of vessel and cargo, no part of the expense of repairs is chargeable as general average.—*Vol. 12, pp. 11, 30.*

452. Goods shipped on deck contribute if saved ; but if lost by *jettison*, they are not entitled to the benefit of general average.—*Vol. 6, p. 456.*

453. When a vessel is not seaworthy at the commencement of the voyage, and the expenses for repairs were incurred in consequence of such unseaworthiness, the owner has no claim for contribution in the nature of general average.—*Vol. 8, p. 229.*

454. Certain property belonging to the United States on board a private ship, was, together with other portions of the cargo, *jettisoned* and a general average made.

The agents in San Francisco, of the owners of the ship, became also the agents of those concerned in the general average, and, as such, received the amount due the Government in respect of it. Held, that the Government would not pay to the owners the whole freight due, and look to the agents for their share in the general average, but would deduct that sum from the freight.—*Vol. 15, p. 147.*

## PILOTAGE.

455. Pilotage is not a port charge.—*Vol. 12, pp. 13–27.*

456. The United States are not liable to pay pilotage, unless expressly made liable by the terms of the charter party.—*Vol. 10, p. 65.*



## POWER OF ATTORNEY.

457. A power of attorney, not coupled with an interest, to receive money due from the United States, is rendered null and void by the death of the person to whom the power of attorney was given. Neither his widow nor his administrator being authorized to discharge the Government from their liability, neither is authorized to receive the money.—*Dec. Sec. Compt., June 16, 1842.*

458. A substitute for an attorney cannot be recognised by the accounting officers, unless the power of attorney authorized such substitution; or, unless the power *to the attorney* was coupled with an interest.—*Dec. Sec. Compt., Oct. 15, 1845.*

459. Where two attorneys are empowered to receive money from a disbursing officer, both must join in the execution of the power. An authority given to two, by power of attorney, cannot be executed by one, though the other die or refuse to act.—*Vol. 13, p. 174.*

## PROPERTY LOST.

460. In order to sustain a claim for property lost in the service of the United States, evidence of the commanding officer must be adduced, under whom the claimant served at the time when the loss occurred, describing the property, the value thereof, the time and manner in which the loss happened, and whether or not it was sustained without any fault or negligence on the part of the claimants.—*Vol. 12, p. 271.*

461. The Treasury Department has no authority to make compensation for property impressed into the service of the United States, or used for military purposes without the consent of the owner, unless Congress provide by a special law for that purpose.—*Vol. 12, p. 480.*

462. There is no law authorizing the officers of the Treasury to pay for private property lost by shipwreck.—*Vol. 12, p. 310.*

463. When property is thrown overboard for the safety of the vessel, and it shall appear that the vessel was overloaded by the owner's agent, from improper motives, the entire loss of the property is chargeable upon the shipowner, even if it were shipped to be carried on deck.—*Vol. 11, p. 431.*

464. When the property lost by the perils of the sea was properly secured and well taken care of, the loss must be borne by the shipper. If the loss occurred through the negligence of the shipowner or his agents, the loss must fall on him. For property not lost by the perils of the sea, nor delivered to the consignee, nor accounted for, the master of the vessel is accountable.—*Vol. 11, p. 424.*

## SALVAGE.

465. If a vessel is wrecked by the perils of the sea, and the cargo belonging to the United States is saved by the master, he may properly claim remuneration for any extraordinary expenses necessarily incurred in thus securing and saving the public property entrusted to his care.—*Vol. 12, p. 156.*

466. Salvage is due to all who assist in securing the property saved. In some cases, the court determines the amount in gross, leaving it to the salvors to apportion it among themselves. In others, where the salvors apply separately, the court makes the apportionment.—*Vol. 8, p. 397.*

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SEAMEN'S WAGES.

467. If, in the course of a voyage, there be a total loss of the ship, the wages of the seamen cannot be claimed subsequent to the breaking up of the voyage. There is no law requiring the shipowner to return captain and crew to their home port.—*Vol. 12, p. 91.*

468. Where a vessel is lost at sea, the wages of the seamen are lost with the vessel.—*Vol. 12, p. 136.*

# MARINE CORPS.

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## MEDICAL ATTENDANCE.

469. Under the general regulations of the Army, par. 1214, edition of 1841, medicines and medical attendance may be furnished to the officers, non commissioned officers, musicians and privates, (and to their families,) of the Marine Corps.—*Dec. Sec. Compt., 1 qr. of 1840. See Maj. A. A. Nicholson's act.*

470. In March, 1848, a marine officer in charge of the recruiting rendezvous in New York, was sick and employed a private physician, no medical attendance being furnished by the Government, and no surgeon attached to the rendezvous, the account of the physician was allowed by the Second Comptroller.—*See Lieut. F. B. McNeill's act.*

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## OFFICE.

471. Officers of the Marine Corps, who are entitled to an office by the general regulations for the Army, must furnish a voucher for the expense actually incurred for office hire,

and the fuel allowed for it will in all cases be drawn in kind. Commutation for neither is allowed.—*Vol. 14, p. 226.*

472. The officer commanding the guard at the gateway of the Navy Yard is not entitled to an office.—*Vol. 15, p. 43.*

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## P A Y.

473. The officers of the Marine Corps, except the adjutant and inspector, are entitled to the same pay and allowances as officers of similar grades in the Infantry of the Army.—*Vol. 6, p. 467.*

474. Only one officer can receive the allowance of senior of marines for a squadron at the same time. The accounts of officers claiming this allowance must be certified by the commanding officer of the squadron; and it must appear from the certificate, that the claimant was the senior marine officer of the squadron for the time charged.—*Dec. Sec. Compt., April 22, 1834.*

475. Under the opinion of the Attorney General of July 21, 1836, the actual command of any number of men sufficiently large to constitute, according to the usages of the Navy Department, a detachment of marines, will entitle the commander, who is responsible for the care of their clothing, &c., to the allowance given in the 2d section of the act of March 2, 1827.—*Vol. 6, p. 577.*

476. A lieutenant of marines, serving with his corps in Mexico, while acting as assistant commissary of subsistence, and also as commander of his company, was allowed

the same additional pay as is allowed to officers of the Army for performing the duties of acting assistant commissary, and also the \$10 per month additional pay for his duty and responsibility respecting the arms, clothing, &c.—*See Paymaster Kirby's account, July 27, 1849.*

477. An officer of marines attached to a Navy Yard or station, or to a squadron, and charged with the delivery of clothing and responsible therefor, is considered in command of a detachment without regard to the number of marines under his command.—*Vol. 6, p. 589.*

478. Captains and subalterns in the Marine Corps are allowed \$10 per month when charged with the responsibility for Army clothing, &c., of a guard of marines on board vessels of war of the class of frigates and above, and at naval stations.—*Dec. Sec. Compt., July 18, 1839.*

479. Officers above the rank of captain are not entitled to the \$10 per month for their duties and responsibilities with respect to arms and clothing, &c.—*Dec. Sec. Compt., 21 August, 1838.*

480. Marines on board a ship are eligible, and may be paid as surgeon's stewards, masters-at-arms, ship's corporals, and yeomen, provided they are qualified and regularly appointed by competent authority, and provided they relinquish all claim to the pay of marines for the time they are paid as petty officers. When so appointed and so serving, they are to be dropped from the roll of marines, and entered on the roll of ship's company, "to be returned to marines when they cease to act as petty officers."—*Decision of Fourth Auditor, sanctioned by Sec. Compt., March 7, 1848.*

481. The services of a corporal of marines as hospital steward, are to be considered fatigue duty, and as coming

within the law of March 2, 1819, and entitling him to the 15 cents per day provided by that act.—*Letter of Sec. Compt., May 4, 1843, to W. P. C. Barton, Med. Bureau.*

482. The laws of Congress provide for one Assistant Quartermaster in the Marine Corps; only one, therefore, can claim pay as such.—*Dec. Sec. Compt., December 20, 1850, in Lieut. Gillespie's case.*

483. An officer of the Marine Corps holding a brevet commission, is entitled to brevet pay when on duty and exercising a command, which, according to the regulations of the Army, is appropriate to the same brevet rank in the infantry.

And in applying this rule, inasmuch, as the Marine Corps is not organized in companies, a number of men equal to the legal complement of a company of infantry, is to be regarded as a company.

And when the command consists of several detachments, each large enough to be regarded as such, and actually separate and distinct, as in different vessels, each of such detachments is to be considered as a company.—*Vol. 15, p. 468.*

484. The twenty-ninth section of the act of July 5, 1838, which authorizes bounty to non-commissioned officers on their re-enlistment, is not applicable to the Marine Corps.—*Dec. Sec. Compt., February 8, 1840.*

485. The marine hospital cannot be regarded as any part of "the Executive or Legislative Departments of the Government," within the meaning of the 2d section of the act of August 31, 1852, known as the 20 per cent. law.—*Vol. 15, p. 436.*

[*See par. 192.*]

## QUARTERS AND FUEL.

486. To entitle an officer of marines to receive commutation for fuel and quarters, he must be assigned to duty at the place where he claims it. If on leave, or furlough, or waiting orders, he is not entitled to it.—*Vol. 15, pp. 94, 447.*

487. An officer of the Marine Corps claiming fuel and quarters, transportation, or travelling allowances, must certify his accounts according to the forms issued from the office of the Second Comptroller, in a letter to Major Nicholson, of the 30 January, 1852.—*Vol. 15, p. 142.*

488. The second section of the act of April 16, 1814, provides, that certain staff officers of the Marine Corps, including the quartermaster, “shall respectively receive \$30 per month in addition to their pay in the line, in full of all emoluments.” Since that law went into operation, the officers therein named are not entitled to forage or additional fuel.—*Vol. 10, p. 10.*

489. If an officer stationed at a commutation post commutes for fuel and quarters, he can claim no more than the commutation allowance, but he has a right to demand his fuel and quarters in kind, and it is the duty of the Government to furnish them.—*Letter of Sec. Compt., December 13, 1836, to Lieut. George Andrews.*

490. There can be no allowance by way of commutation for quarters and fuel, to marine officers when at sea.—*Vol. 10, p. 79.*

## RATIONS.

491. Officers of the Marine Corps, entitled to double rations, are not to be deprived of them when on leave of absence from their posts for a period less than thirty days, or when temporarily absent on courts-martial or other duty for a longer period.—*Lieut. A. H. Gillespie's case, February 23, 1843.*

492. The station at Washington, including the Navy Yard, constitutes but one command. Double rations cannot therefore be allowed to more than one officer of the Marine Corps as commandant of that post.—*Vol. 13, p. 254.*

493. It was held that the lieutenant colonel in command of the Marine Corps, during the time when the colonel commandant was serving with the Army in Mexico, was entitled to double rations.—*Lieut. Col. Wainwright's case, September 8, 1847.*

494. The General Orders of the Navy Department, of July 30, 1841, and December 11, 1849, do not recognise more than one separate post or command at any of the Marine stations. Navy yards belong to the permanent posts; and but one marine officer at a permanent post is entitled to double rations, or to the other allowances usually made to commanders of separate posts.—*Vol. 15, p. 55.*

495. The Adjutant and Inspector, Quartermaster and Paymaster, of the Marine Corps, have no stronger legal claims to double rations than the like officers of the Army who may be stationed at Washington merely to perform the appropriate duties of their respective offices.—*Vol. 6, p. 467.*

496. Under the 5th section of the act for the better organization of the Marine Corps, passed June 30, 1834,

officers of the Marine Corps are entitled to receive one additional ration per day for every five years' service.—*Vol. 6, pp. 560, 570.*

497. The act approved July 5, 1838, granting an additional ration to officers of the Army for every five years' service, embraces the officers of the Marine Corps.—*Dec. Sec. Compt., July, 1838.*

498. When a marine is detailed for duty as provost marshal of a naval court martial sitting at Washington, he must draw his rations in kind; and if inconvenient to do so, he must commute at cost price, in accordance with the General Order of the Navy Department of 24 February, 1851.—*Vol. 15, p. 153.*

[*See par. 237, 240.*]

499. A marine officer, who held a commission in the Army prior to entering the Marine Corps, is not entitled, in computing the longevity ration, to add the time he so served in the Army.—*Vol. 12, p. 395.*

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## REGULATIONS.

500. By the act of June 30, 1834, chap. 132, the Marine Corps is at all times subject to and under the Laws and Regulations established for the government of the Navy, except when detached for service with the Army.—*Vol. 6, p. 467.*

## TRAVEL PAY.

501. Marines on their discharge from service are, like privates in the Army, entitled to travelling allowance to the place where enlisted.—*Dec. Sec. Compt., July 19, 1839.*

502. Marine officers travelling to attend a court-martial, or returning therefrom, whether as members of the court or as witnesses, are entitled to seven cents per mile only.—*Vol. 15, p. 43.*

503. No vouchers for travelling expenses of officers of the Marine Corps will be admitted, unless the routes on which the travel was performed are given, and distances charged according to the Post Office measurement on the route usually travelled.—*Vol. 15, p. 29.*

[*See par. 282.*]

504. The travelling expenses of persons employed as clerks to officers of the Marine Corps, incurred under orders, may be refunded; but the actual expense incurred is the rule of compensation.—*Dec. Sec. Compt., March 1, 1848.*

# NAVY.

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## ALLOTMENTS.

505. Persons who execute allotments have a right to revoke them whenever they please. They are not intended, nor can they be used to secure the payment of debts. They are allowed only to provide for the support of the families of those by whom they are signed. If the allotment be stopped by the person who executed it, the attorney named has no remedy against him except what any other creditor would have.

Payments on allotment tickets are made to no other person than the attorney therein named, or some one duly authorized by such attorney, or by the Secretary of the Navy to receive them.

An officer cannot have an allotment running unless he is absent from his family and on duty.—*Vol. 6, p. 38.*

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## APPROPRIATIONS.

506. From and after the 1 July, 1851, the allowance of pocket money to Navy pensioners, and the pay or compensation of all persons borne on the rolls of the Naval Asy-

lum, and not specially provided for in the estimates of the Navy Department for that institution, shall be charged to "Navy Hospital Fund."—*Dec. Sec. Comp., May 2, 1851.*

507. Machinery for the rope walk is to be charged upon the appropriation for the navy yard.—*Vol. 9, p. 397.*

508. All stoves, grates, fixtures of every kind, cooking utensils, carpeting, and furniture for national vessels are chargeable upon the appropriation "for the increase, repair, armament," &c., of the Navy, and when required for furnishing buildings or offices attached to a navy yard, are chargeable to the appropriation for that yard.—*Vol. 9, p. 368.*

509. There is no head of Navy appropriation to which payments to clerks in the Patent office for making copies of papers for the use of the Navy Department can properly be charged.

It is the duty of every Department of the General Government to furnish, without charge, to every other Department all copies from its records that may be properly required for official use.—*Vol. 15, p. 255.*

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## BOATS' CREWS.

510. The expenses of boats' crews visiting the shore in foreign ports, will not be allowed except in cases of unavoidable detention more than one day; and in such cases only for the time detained beyond what was expected when the boat left the ship, upon a voucher duly approved, setting forth the cause and time of such detention, and the number of the boats' crew. For that time rations will not

be issued to the boats' crew.—*Circular from Navy Department, October 21, 1834.*

511. The Secretary of the Navy, on the 17 June, 1848, authorized the commander of the yard at Norfolk to hire a boat's crew of colored men, whether slaves or not, for the use of the yard and receiving ship.

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### CONTRACTORS.

512. No assignment of a contract will be recognised by the accounting officers of the Treasury unless such assignment shall have been approved by the chief of the bureau with whom it was made.—*Vol. 14, p. 116.*

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### COURTS MARTIAL.

513. The members of a Naval court-martial are considered as on duty from the time of reporting until the dissolution of the court by order of the Department, and are to be paid accordingly, though they may have been in the mean time discharged by the president of the court, and reconvened by the Department.—*J. S. Lee's case, May 5, 1851.*

514. Citizen Judge Advocates of Naval courts-martial are to be allowed ten dollars per day while employed in making preparation for and attending the trial, and ten dollars for every fifteen pages of record; each page to contain at least 180 words.—*Dec. Sec. Compt., Nov. 15, 1839*

515. One who attempts in good faith, and with reasonable prospect of success, to obey a summons to attend a court-martial as a witness, will be entitled to his expenses if he accidentally fails. But if the summons reaches him at so late a day, or if he delay so long after he receives it as to leave no reasonable ground to suppose that he can arrive in season to testify, the expenses of his journey will not be allowed.—*Vol. 15, p. 476.*

516. A clerk to a Judge Advocate of a Naval court-martial, is allowed to assist in preparing the record, and his compensation is fixed at three dollars per day while actually employed—if he holds no other situation in which he receives pay from Government.—*Dec. Sec. Compt., August 26, 1851.*

517. Citizens, when attending Naval courts-martial as witnesses, are entitled to the allowance provided by the Regulations of January 20, 1831, to wit, two dollars per day, and to the same travelling allowance with officers.—*Dec. Sec. Compt., December 1, 1841.*



#### DECEASED SEAMEN.

518. The captain's clerk is not to be regarded as "an officer," within the meaning of the regulation requiring that the will of a seaman shall be attested by an officer.—*W. Clark's case, 10 May, 1837.*

519. Wills of seamen and marines, whether in actual service or not, are required to be in writing, and attested by an officer.—*Dec. Sec. Compt., April 26, 1847.*

## DISBURSING OFFICERS.

520. When supplies for the Navy are purchased under a contract, such contract must be filed in the office of the Second Comptroller, before vouchers for payments can be admitted.—*Vol. 8, p. 44.*

521. Claims are allowed in favor of officers of the Navy for discount on the funds provided by the Government for payments to be made without the United States, when it was made to appear that the discount claimed was the usual one on the funds provided at the place where the disbursements were made.—*Dec. Sec. Compt., Sept. 20, 1836.*

522. Under the 5th section of the act of March 3, 1809, all such services of supplies for the Navy, as are to be rendered or furnished at a future day, must be contracted for by previously advertising for proposals; and this proceeding is not to be dispensed with, except when the public exigencies require the immediate delivery of the articles, or the performance of the services.

When the exigencies of the public service require the immediate purchase and delivery of supplies, and such supplies are necessarily obtained by open purchase, without advertising for proposals, the necessity of the purchase in that manner must be certified by the commanding officer of the yard; and when the purchase is made under a contract, growing out of advertising for proposals, that fact should be certified in like manner on the voucher.—*Vol. 10, pp. 10, 139, 145, 150, 154, 276, 367.*

523. An officer's certificate to a postage account is held sufficient by the Navy Department, without an oath.—*Dec. Sec. Compt., October 22, 1845.*

[See Title "MISCELLANEOUS SUBJECTS," chap. "DISBURSING OFFICERS."]

## LEGAL EXPENSES.

524. It has been the practice to reimburse to officers such expenses as have been incurred by them, when prosecuted before the civil courts, for acts done in the line of their duty.—*Capt. M. C. Perry's case, Sept. 5, 1848. Capt. A. S. McKenzie's case, Nov. 20, 1848.*

525. It is customary to allow compensation to an attorney for his services in procuring the liberation of a seaman by habeas corpus, who is under arrest on civil process.—*Z. Collins Lee's account, Aug. 8, 1850.*

526. The District Attorney at New Orleans was allowed \$250 for an examination of the title to land selected for the site of a naval depot at New Orleans.—*Dec. Sec. Compt., June 9, 1851.*

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LIVE OAK.

527. By the instructions of the Secretary of the Navy, in force in the year 1831, the several agents for preserving live oak timber, were allowed, while engaged, at the rate of \$1,800 per year salary, and \$1 25 per day to cover expenses of self and horse, and \$26 per month to an assistant, including his subsistence.—*Vol. 3, p. 425.*

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MEDICAL ATTENDANCE.

528. The act of March 3, 1835, regulating the pay of the Navy, prohibits any special allowance to the officers therein named for expenses incurred by reason of sick-

ness, whether for medical attendance or otherwise.—*Dec. Sec. Compt., May 2, 1840.*

529. When any officer of the Navy, while attached to a receiving ship, employed on shore duty, or on leave of absence, shall be admitted into a Naval Hospital, he will be charged with the costs of his subsistence while he may remain in such Hospital, but in no case shall such charge exceed the value of the Navy ration, viz., twenty cents per day, which will be deducted from the officers' accounts, and credited to the Navy Hospital Fund.—*Regulation of Sec. Navy, under the law of March 3, 1851; June 3, 1851.*

530. Since the passage of the act of March 3, 1835, which greatly increased the pay of officers of the Navy, no allowance can be made to a private physician for medical services rendered to an officer of the Navy.—*Vol. 13, p. 319.*

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#### NAUTICAL ALMANAC.

531. The act of March 3, 1849, provided for the appointment of a superintendent of the Nautical Almanac and the payment of his salary at the rate of \$3,000 per annum.

The naval Appropriation Act of the following year, appropriated generally for the expenses of the Nautical Almanac, the whole amount specified in the official estimates of the Navy Department, in which was included the salary of the superintendant. Held, that as this appropriation was for purposes that would properly include the salary, and was for the whole amount of estimates in

which it was specifically embraced, it was within the power of the Secretary of the Navy to continue the payment of it.—*Vol. 15, p. 181.*

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NAVAL ACADEMY.

532. The salaries of the civic professors at the Naval Academy at Annapolis, and the salary of the secretary, are paid out of the appropriation for “pay of the Navy.”

Prof. of Ethics	-	-	-	-	\$1,500 per annum.
Prof. of Nat. and Exper. Philosophy					1,500 per annum.
Prof. of Spanish	-	-	-	-	1,200 per annum.
Instructor of Drawing	-	-	-	-	1,000 per annum.
Instructor of Defence	-	-	-	-	500 per annum.
Two assistant Profs. of Ethics, each					1,000 per annum.
Assistant Prof. of French	-	-			1,000 per annum.
Assistant Prof. of Nat. and Exper.					
Philosophy	-	-	-	-	1,000 per annum.
Secretary of Naval Academy	-	-			1,250 per annum.
Clerk to Superintendent	-	-			500 per annum.

*Dec. Sec. Compt. September 3, 1850; Dec. Sec. Compt. January 18, 1851; July 1, 1851.*

533. The Superintendent of the Naval School was authorized to employ a clerk at \$500 per annum, with the approval of the Secretary of the Navy.—*Dec. Sec. Compt., January 18, 1851.*

## NAVY AGENT.

534. In the adjustment of the accounts of Navy Agents, when the commission of one per cent. on the disbursements exceeds \$500 in any one quarter, the allowance to the Agent for his compensation for such quarter, should be limited to that sum; and when the term of service falls short of a quarter, the allowance should be pro rata only, not however to exceed one per cent. on the disbursements.

In cases where the commissions at one per cent. exceed \$500 in some quarters and fall short in others of the same year, the deficiencies may be made up by the excess, so as to make the whole commissions amount to \$2,000, if the commissions for the year come up to that sum.—*Vol. 6, p. 16.*

535. The purchasing agent at Valparaiso is allowed reasonable charges for store rent, watchmen, and postage, if properly vouched, and a commission on all purchases, including hard dollars, not to exceed \$2,000 per annum.—*W. G. Morehead's case, February 27, 1852.*

536. Where a Navy Agent who is also a Purser in the Navy transfers a sum of money from himself as Navy Agent to himself as Purser, the one per cent. allowed by law on disbursements is not chargeable.—*Vol. 11, p. 163.*

[*See title "MISCELLANEOUS SUBJECTS," chap. "DISBURSING OFFICERS."*]

## NAVY YARDS.

537. The regulations of January 20, 1844, designating the books authorized for the libraries of the navy yards

and public vessels, prohibit any deviation from the tables unless by express authority from the Head of the Department.—*Vol. 15, p. 165.*

538. No person in a navy yard is to be called a clerk other than those provided for by law. All others similarly employed are to be called writers, and the place of their employment specified on the roll.—*Dec. Sec. Compt., October 19, 1843.*

539. An ordinary at a station is under the command of the commandant of the yard, but in no sense can it be considered as a part of the yard, nor can an officer attached to the ordinary be considered as doing duty in the yard.—*Dec. Sec. Compt., July 29, 1844.*

540. No articles of furniture other than fixtures, in the legal acceptation of the term, can be purchased for houses allotted to officers of the Navy at navy yards.—*Vol. 5, pp. 261, 504.*

541. When the ordinary duties of the Navy Yard require that messengers shall be sent and compelled to cross toll bridges and ferries, the commandant of the yard is authorized to approve accounts to cover the actual expenses that may be incurred, and the Navy Agent is authorized to pay the same.—*Dec. Sec. Compt., September 1, 1835.*

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PAY.

542. When an officer is promoted, and his new commission specifies that it is to take effect from an antecedent date, he is entitled to the pay of the superior grade from such antecedent date, without regard to the nature of the duty

performed by him in the intermediate time.—*Dec. Sec. Compt., January 11, 1840; Mid. Jenkins's case, September 13, 1836.*

543. Officers of the Navy when supended from duty merely, under sentence of a court martial, are entitled to their pay.—*Vol. 6, p. 31.*

544. An officer promoted while under suspension by sentence of court martial, is thereby restored to service.—*Dec. Sec. Compt., March 21, 1842.*

545. Officers of the Navy who are suspended from duty by sentence of court martial, are to receive "leave of absence pay," unless it is otherwise determined by the court.—*Case of Sur. Codwise, September, 1836.*

546. When the President disapproves of the sentence of a court martial, cashiering an officer, and restores him to duty, the proceedings of the court are to be considered cancelled, and the officer is entitled to his pay.—*Passed Mid. Barney's case, May 3, 1847.*

547. A greater number of officers on board a vessel of war than the complement of such vessel, cannot be paid.—*Dec. Sec. Compt., 23 March, 1838.*

548. Two ships of war, without regard to size, are sufficient to form a squadron in such a sense as to entitle the officer in the actual command to the pay of a commander of a squadron.—*Captain Geisenger's case, August, 1834.*

549. Under the act of 6 February, 1811, one ration per day is to be deducted from the pay of both officers and seamen while in hospital, for the benefit of the Navy Hospital Fund.—*Dec. Sec. Compt., August 24, 1835.*

550. The distribution of prize money does not entitle an officer to duty pay.—*Dec. Sec. Compt., February 1, 1849.*

551. The evidence required to sustain payments to officers of the Navy temporarily performing the duty of those of a higher grade previous to the act of June 17, 1844, and to acting masters since that time, is a written acting appointment from the Secretary of the Navy, or, if at sea, from the commanding officer of a squadron or vessel on separate service, except in cases where the officer performing the service is himself the commander of such squadron or vessel.—*Vol. 5, p. 359.*

552. When an officer of the Navy is furloughed "until further orders," and subsequently receives an order to report himself as a witness before a court martial, the order puts an end to the furlough.—*Dec. Sec. Compt., 12 April, 1835.*

553. An officer attending on prize causes in which he is himself concerned, after the delivery over to the marshal of the prize vessels, is not to be considered on duty, unless he is acting under the special order of the Department.—*Dec. Sec. Compt., March 1, 1849.*

554. It has been the uniform practice to consider officers who return from a foreign station by permission in consequence of sickness, and who do not return to their vessels, as passengers merely and as not entitled to duty pay on their passage home.—*Dec. Sec. Compt., May 3, 1847.*

555. Preparatory orders are given for the convenience of the officer, and do not put him on duty pay.—*Case of Capt. Thos. Ap. C. Jones, July 25, 1845.*

556. When an officer shall be proceeding to a station or returning from one, under orders not given at his own request or for his convenience or accommodation, he is to be considered on duty, and entitled to pay from his domicile or station, provided there shall be no unnecessary delay on his part.—*Lieut. Pauldin's case.*

557. An officer by receiving an order to attend his own trial before a court martial, is not thereby raised from "leave" pay to "duty" pay.—*Capt. W. C. Bolton's case, November 29, 1841.*

558. Officers are entitled to full pay when proceeding, under orders, to join a ship or station, from the time when they leave their domicil in obedience to such order, unless it be expressed in the order itself that they are not to receive such pay.—*Dec. Sec. Compt., January 30, 1837.*

559. Officers reporting for duty on a future day designated in an order, may be allowed a reasonable time for performing the necessary travel, and while so travelling shall be regarded as on duty.—*Dec. Sec. Compt., January 30, 1837.*

560. An officer on duty ordered to attend his own trial before a court martial, and who is honorably acquitted, is allowed duty pay.—*Lieut. C. H. Poor's case, July 6, 1843.*

561. Receiving vessels are not to be regarded as vessels in commission for sea service, and consequently the officers are not entitled to sea pay, nor to the ration allowed to officers on sea duty.—*Dec. Sec. Compt., November 1, 1843.*

562. A naval officer is entitled to his sea pay while temporarily absent from his ship in attendance as a witness before a civil court.—*Lieut. G. F. Sinclair's case, October 28, 1844.*

563. Officers "off duty" ordered to attend a court martial as members or witnesses, are, by the order, if complied with, put upon duty pay as provided by the act of 3 March, 1835.—*Dec. Sec. Compt., August 18, 1835.*

564. Under the act of April 23, 1800, sec. 3, the officers of the United States vessels wrecked, lost, or de-

stroyed, retain their command and authority over their crews, and are entitled to the same pay as on board ship.—*Dec. Sec. Compt., case of the "Concord," October 12, 1842.*

565. Continuous service is necessary to entitle an officer to the increase of pay depending on length of service.—*Dec. Sec. Compt.*

566. The officers of the Naval Academy, including the midshipmen and acting midshipmen, are not entitled to any increase of their compensation while embarked for purposes of instruction on board the practice ship.—*Dec. Sec. Compt., July 1, 1851.*

567. Lieutenants commanding larger vessels than their appropriate command, by the complement table, are entitled to pay as lieutenants commanding.—*Dec. Sec. Compt., December 29, 1851.*

568. The right of a surgeon to the pay of fleet surgeon does not depend upon his being the senior surgeon of the squadron, nor upon his having performed the duties of fleet surgeon, but upon the question whether or not he received an appointment to that grade under the act of May 24, 1828.—*Dec. Sec. Compt.*

569. The term "lieutenants commanding," as used in the act of March 3, 1835, applies exclusively to lieutenants in command of vessels, and not to such as have command of bodies of men on shore.—*Dec. Sec. Compt., February 21, 1840. Lieutenant H. H. Bell's case.*

570. Lieutenants of the Navy, commanding the U. S. mail steamships, will be allowed the pay of lieutenants commanding, and passed midshipmen, serving as watch officers in said ships, the pay of passed midshipmen on duty.—*Lieut. Schenck's case, November 10, 1851.*

571. The increased pay of a surgeon in the Navy, ordered to report for duty on a future day designated in the order, will commence on that day, if he shall so report.—*Vol. 5, p. 525.*

572. A surgeon in the Navy, returning from a foreign station to the United States in charge of sick seamen, is entitled to the pay which he would have been entitled to at a hospital.—*Case of Surgeon Codwise, August, 1841.*

573. The “duty pay” of surgeons commences at the date of the acceptance of their orders. All others, including passed assistant surgeons, are allowed increased pay only from the time of leaving their domicils or stations to enter upon the duty assigned them.—*Dec. Sec. Compt.*

574. The act of March 30, 1812, provides that “no person shall act in the character of purser who shall not have been first nominated and appointed by the President and Senate.” While this law remains in force, no naval officer can be allowed the pay and emoluments of purser, nor any additional compensation, while acting as such in obedience to the command of his superior officer.—*Vol. 15, p. 90.*

575. Surgeons acting on boards of examination are entitled to the same pay as when stationed at yards, hospitals, &c.—*Dec. Sec. Compt., August, 1839.*

576. An assistant surgeon, previous to the act of June, 1844, was allowed the pay of surgeon, when, by the Regulations of the Department, the complement of medical officers for any particular class of vessels was a surgeon and assistant surgeon, and the whole duty on board a vessel of that class was performed by the assistant surgeon.—*Vol. 6, pp. 372, 383, 416, 445.*

577. Passed midshipmen, performing the duty of masters under the orders of the Secretary of the Navy, are not considered as forming a part of the limited number of one hundred and eighty who are allowed by law to receive passed midshipmen's pay.—*Dec. Sec. Compt., August, 1846.*

578. A passed midshipman, while doing the duty of a master, under the orders of the Secretary of the Navy, is entitled to the pay of a master.—*Dec. Sec. Compt.*

579. A passed midshipman, appointed acting master of a ship by his commander, and his appointment approved by the Secretary of the Navy, is entitled to the continuance of his pay, as such, when transferred and doing duty in that capacity or a higher one on board a prize vessel.—*Passed Mid. Shephard's case, March 22, 1851. Passed Mid. Brodhead's case, September 15, 1851.*

580. The secretary of the governor of the Naval Asylum at Philadelphia is allowed \$900 per annum, commencing July 1, 1844.—*Dec. Sec. Compt., 1845.*

581. Acting master's mates are not entitled to the \$450 per annum provided for by the act of 3 March, 1835.—*Dec. Sec. Compt., April 22, 1837.*

582. Midshipmen attending boards of examination for promotion are entitled to duty pay while in attendance upon the board, if they pass examination and are promoted.—*Dec. Sec. Compt., August 18, 1835.*

583. The limitation created by the 4th section of the act of March 3, 1845, as to the number of officers who should receive the pay of passed midshipmen, operated as a repeal of so much of the act of March 3, 1835, as was inconsistent with it.

The 16th section of the Naval Appropriation bill of August 3, 1848, suspending the operation of that limitation from the date of the last mentioned act until the classes of 1841 and 1842 had been examined, has no retrospective effect.

All passed midshipmen were, therefore, entitled to the pay of that grade from the passage of the act of August 3, 1848, until the examinations took place ; and those only who, after that period, came within the limited number of one hundred and eighty, from the date of their rank, could thenceforth receive it.—*Vol. 15, p. 356.*

584. Professors of mathematics, secretaries of commodores, and captain's clerks, are to be considered on the same footing with other officers of the Navy in regard to the commencement of their pay.—*Dec. of Compt., January, 1839.*

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PETTY OFFICERS AND SEAMEN.

585. A boatswain's mate illegally disrated and compelled to perform the duty of a seaman, is entitled to the pay of boatswain's mate.—*Case of Wm. Williams, December 8, 1842.*

586. A man enlisting as fireman on board a steamer and illegally disrated, is entitled to his pay as fireman.—*Case of Luther Parsons, November 2, 1849.*

587. Under the law of March 3, 1837, a detained or re-enlisted seaman is entitled to an addition of one-fourth of the pay of the respective grades he may hold during his detention or re-enlistment.—*George Greenlee's case, October 12, 1843.*

588. A yeoman on board a first class steamer is entitled to the same pay as if serving as such on board a first class sloop of war.—*Dec. Sec. Compt., July 25, 1845.*

589. A seaman whose term of service expires while he is a petty officer, and who re-enlists under the act of 2 March, 1837, will be entitled to an addition of one-fourth to his pay as such petty officer, from the commencement of his new term until his discharge in the United States, unless he shall have been disrated in the mean time by proper authority.—*Dec. Sec. Compt., December 22, 1839.*

590. When a seaman leaves his ship after the expiration of his term of service, his detention not having been reported to the Department as required by law, he may claim the amount due him at the time of his leaving the ship.—*Chas. Johnson's case, July 20, 1842.*

591. A man on the sick list in hospital, not in a condition to be discharged, is not entitled to pay after the term of his service has expired.—*Dec. Sec. Compt., September 9, 1847.*

592. Apprentices in the Navy are to be paid according to the table of complements.—*Dec. Sec. Compt., March 2, 1843.*

593. Apprentices in the Navy discharged by writ of habeas corpus, are entitled to their arrears of pay.—*Cases of Cooper and Quayle, May 1, 1842.*

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PRESENTS.

594. If Naval officers when in foreign countries receive presents, and make presents or payments in return, it must be done at their own expense, and not at the expense of the United States.—*Com. Patterson's case. Dec. Sec. Compt., 1840.*

## PURSERS.

595. Sixty days duty pay only, is allowed a purser of two or more vessels at the same time for settling his accounts, and not sixty days for each vessel. A purser of a storeship is to be paid as "on duty at other places," under the law of 26 August, 1842.—*Dec. Sec. Compt., August 16, 1851.*

596. An officer of the Navy acting as purser by order of his commanding officer, will be allowed his travelling expenses, and will be regarded as travelling under orders when making journeys necessary to the performance of his duties as purser, or the settlement of his accounts.—*Lieutenant Eagle's case, August 31, 1844.*

597. A Navy agent who is also a purser, is not entitled to a commission upon money transferred from his account in one capacity to that in the other.—*Vol. 11, p. 163.*

598. An acting purser holding no other office, is not entitled to a commission of two and a half per cent. on his disbursements, he being entitled to no more than the compensation allowed by law to pursers.—*Dec. Sec. Compt., April, 1840.*

599. When an officer of the Navy is acting purser, the term of sixty days to settle accounts for which he is to be allowed duty pay, is not to commence until he is released from duty and placed on leave of absence, no matter how remote that date may be from the date at which he transferred the duty of purser.—*Case of Com. Adams, June 9, 1848.*

600. The Regulations of the Navy Department, of April 1, 1833, providing that "acting pursers who held no other naval office at the same time" should receive a commission on their disbursements, has been decided by the Chief

Justice of the Supreme Court of the United States to be contrary to law, and is therefore inoperative and void.—*Vol. 8, p. 221.*

601. A purser in the Navy may be allowed, in the settlement of his accounts, for slop clothing and small stores furnished by order of the commander of the vessel, to a seaman in debt to the United States, who dies or deserts before the amount can be liquidated by a deduction from his pay. Provided, the order of the commanding officer specifies the articles to be furnished, and states that they are essential to the health and comfort of the seaman. No such order, however, can sanction an advance of money to a seaman in debt.—*Dec. Sec. Compt., December, 1841.*

602. Pursers attached to war steamers are paid according to the rating of the steamers by the Navy Department.—*Dec. Sec. Compt., June, 1845.*

603. Over payments, other than such as are produced by authorized advances, will be invariably disallowed, whether made in money, slops, or stores, except such advances in slop clothing as may be made to seamen by the special written order of the commander of the vessel, and then only on the production of such order.—*Vol. 5, p. 527.*

604. A purser in the Navy is not entitled to double pay for doing duty at a yard and on board a receiving ship at the same time.—*Purser De Bree's case, December, 1843.*

605. When a purser sustains a loss on one class of stores and gains on another, the excess realized in the one case may be applied to a *bona fide* deficiency in the other.—*Dec. Sec. Compt., August 13, 1847.*

606. Whenever a Navy agent shall be authorized to make advances to officers bound on a cruise, it is the duty

of the purser of the vessel to furnish such agent, for his guide, a correct list, signed by himself and approved by the commanding officer, of all the officers entitled to an advance of pay, which list must exhibit their names, rank, and monthly pay.—*Cir. from Navy Department, October 5, 1843.*

607. No commission exceeding one per cent. is allowed to consuls who negotiate bills of exchange. It is the duty of pursers to negotiate bills, except when it is absolutely necessary to employ another agent.—*Dec. Sec. Compt., March 15, 1848.*

608. When the clothes of a seaman are thrown overboard to prevent infection, they are to be paid for by Government.—*Dec. Sec. Compt., July 12, 1842.*

609. The purser of the practice ship will be allowed a clerk at a compensation not to exceed \$500 per annum.—*Dec. Sec. Compt., August 4, 1851.*

610. No allowance is made for the expenses of the maintenance of a minister of the United States while on his passage in a ship of war. The expense is to be defrayed by the minister himself.—*Dec. Sec. Compt., March 9, 1846.*

[*See title "MISCELLANEOUS SUBJECTS," chap. "DISBURSING OFFICERS."*]

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## RATIONS.

611. Officers of the Navy while attached to a vessel for sea service, whether employed in the coast survey or the Navy proper, are entitled to their rations while temporarily doing the duty of the vessel on shore.

This rule applies also to clerks allowed by the Navy Department to chiefs of hydrographical parties of the coast survey while in actual command of vessels at sea.—*Dec. Sec. Compt., August 19, 1851.*

612. The officers of a United States ship “wrecked, lost, or destroyed,” are entitled to their rations till detached by the Navy Department, notwithstanding the proviso in the Navy Appropriation act approved March 3, 1851; as the act of April 23, 1800, (art. 3, sec. 3,) continues the command, pay, and emoluments as before to the officers and crew who performed their duty.—*Case of Lieut. F. C. Murray, U. S. steamer “Jefferson,” November 29, 1851.*

613. No person employed upon a duty which does not give a ration under previous laws and regulations, will be entitled to one by virtue of the law of March 3, 1851.

“Officers’ attendants,” within the meaning of the laws, are the cabin and ward-room stewards and cooks, and such persons belonging to vessels of the Navy as attend to the wants of commissioned and warrant officers, and who habitually receive their subsistence from the messes of such officers.—*Vol. 14, p. 333.*

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#### TRAVEL PAY.

614. Officers of the Navy are not entitled to travelling allowance for journeys within the United States, unless made in pursuance of orders.—*Vol. 15, p. 342.*

615. When a naval officer is promoted while on a foreign station, and returns home, not at his own request, but in consequence of the inability of the commanding officer to

give him duty appropriate to his rank, he is to be regarded as returning under orders.—*Case of Lieut. Wm. Green.*

616. When officers of the Army or Navy, without the United States, are obliged to pay for their transportation in the performance of duties assigned them by their commanding officers, such expenditures are to be refunded.—*Dec. Sec. Compt., July, 1843.*

617. Per diem and travelling allowances to witnesses, other than Naval officers, summoned before marine courts martial “by authority derived from the Navy Department,” are to be regulated by the allowances in such cases in army courts martial.—*Act of June 30, 1834, assimilating Army and Marine Corps.*

618. A naval officer who changes his place of residence, giving no notice thereof to the Department, if ordered on duty will be entitled to travel pay from his former place of residence only, if the distance is thereby increased.—*Case of Mid. Alexander, Nov., 1838.*

619. Officers in charge of drafts of men, travelling under orders from one post to another, are entitled to the legal allowance of ten cents per mile, according to the Post Office table of distances.—*Dec. Sec. Compt., Dec. 9, 1837.*

620. An officer at St. Louis received an order to report for duty on board his ship at Norfolk. On arriving at Washington he ascertained that the ship had sailed for New York, and he forthwith proceeded to join the ship at that port. It was decided, that as it appeared he had used proper diligence in obeying the order, he was entitled to travelling pay from Washington to New York.—*Lieut. Smith's case, April, 1839.*

621. The rate of travelling expenses, as fixed by the act of 3 March, 1835, is the proper allowance for pursers, as well as for all other officers of the Navy or citizens, who perform travel in pursuance of orders or authority derived from the Navy Department.—*Dec. Sec. Compt., Feb. 2, 1837.*

622. Assistant surgeons are not entitled to travelling expenses in going to or returning from the place where the medical board of examination is convened, unless they are both examined and passed.—*Case of Dr. Holmes, Nov. 23, 1843.*

623. Midshipmen who shall produce a certificate from the president of the board of examination, that they have "passed," are to be paid their travelling expenses at the rate of ten cents per mile, according to the Post Office table of distances. No per diem is allowed.—*Dec. Sec. Compt., 18 April, 1835.*

624. Assistant surgeons, attending examination for promotion, are placed on the same footing as to travel, &c., as midshipmen under similar circumstances.—*Dec. Second Compt., 1839.*

625. The same rule in regard to travel applies to assistant engineers, when permitted to attend boards of examination for promotion or admission, that is applied to assistant surgeons and midshipmen under similar circumstances.—*Thos. A. Jackson's case, Dec. 11, 1851.*

626. Midshipmen failing to pass, although regarded as on duty, are not entitled to travelling expenses.—*Dec. Sec. Compt., June, 1836.*

## WARRANT OFFICERS.

627. The appointment of forward warrant officers is, by law, confined to the President.

Neither the commander of a vessel nor the commander of a squadron can give a valid appointment in such cases.—*Dec. Sec. Compt.*

628. When a seaman performed duty as boatswain, under an acting appointment as such by the commanding officer of the squadron, subsequently approved by the Secretary of the Navy, he is entitled to be paid as boatswain. The acts of 3 March, 1839, 23 and 26 August, 1842, and 30th September, 1850, do not apply to such a case. And the proviso to the act of 4 August, 1842, was, so far as relates to warrant officers, repealed by the act of March 3, 1847.—*Vol. 15, p. 444.*

629. A master's mate is not included in the complement of any vessel agreeably to the present table; and such an appointment cannot be made by any commanding officer without special sanction of the Secretary of the Navy.—*Dec. Sec. Compt., 1848.*

## PENSIONS.

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630. The Second Comptroller has no authority to decide on pension claims ; that belongs exclusively to the Commissioner of Pensions.—*Vol. 10, p. 353.*

631. The decisions of the Pension Office as to the allowance of pensions, and the designation of heirs, executors, administrators, and guardians, to whom payment should be made, are to be regarded as final by the accounting officers.—*Vol. 15, p. 82.*

632. Pensions are payable to the persons named in the certificate, if living, and to the legal representatives of such as may have died.—*Vol. 14, p. 21.*

633. No deduction is to be made from the amount of pension due a deceased pensioner, on account of his indebtedness to the United States accrued before the granting of the pension.—*Capt. Angus's case, May, 1837.*

634. If once placed on the pension roll and thus acquiring a legal claim to a semi-annual payment of a certain sum of money, the pensioner shall fail to assert this claim for six years, he cannot have his account audited without the authority of Congress.—*Vol. 11, p. 107, 160.*

635. When the War Department has given special directions as to the payment of a pension, it is the duty of the pension agents to follow the directions ; and if payment be made, not in accordance with such directions, it cannot

be admitted at the Treasury to the credit of the agent.—*Vol. 11, p. 403.*

636. An invalid pensioner is legally entitled to his pension, although employed on hire in the service of the United States.—*Vol. 14, p. 68.*

637. The conviction and imprisonment of a pensioner for crime does not disqualify him from taking the usual oath of identity ; nor does it deprive him of his right to draw his pension, or to appoint an agent to draw it for him.—*Case of W. C. Keen, master at arms, 1842. Dec. Sec. Compt., March 20, 1852.*

638. When an act of Congress directs the Secretary of War to make payment of a pension to the heirs of a deceased person, and that officer has issued the certificate in conformity to the law, the pension agent cannot pay over the money to any other person than the heirs, as expressly directed in the act.—*Vol. 13, p. 30 ; Vol. 12, p. 376.*

639. The amount of pension due a pensioner under several acts of Congress, can be properly paid without a separate power of attorney under each act. One power of attorney will be sufficient, if it covers all the time for which the pension is due under all the acts.—*Vol. 14, p. 141.*

640. A pensioner may at any time revoke a power of attorney which he has given for the collection of his pension, and demand payment to himself at the agency.—*Vol. 14, p. 464.*

641. By the 4th section of the act of July 4, 1836, the attorney of a pensioner is required to make oath, not only that he has no interest in the money by any pledge, &c., but also that “ he does not know or believe that the same has been so disposed of to any other person whatever.”—*Vol. 8, p. 43.*

642. The oath to be taken by the attorney of a pensioner claiming under the act of July 4, 1836, must be administered and certified by the agent who makes the payment, or an accounting officer of the Treasury.—*Vol. 6, p. 195.*

643. When a simple power of attorney is given to draw the money due a pensioner at a certain date, and the pensioner dies before the pension becomes due, the power of attorney is a nullity.—*Vol. 9, p. 541.*

644. The attorneys of commissioned officers who are pensioners, and of widows pensioned under the Navy Pension laws, are required to make oath that they have no interest in the money they are authorized to receive, "by any pledge, mortgage, sale, or transfer."—*Vol. 11, p. 356.*

645. An attorney of a pensioner may take the required oath before a notary, when the notary is, by law, authorized to administer oaths in other cases.—*Vol. 14, p. 2.*

646. The term "legal representatives" of a deceased pensioner, as used in the act of March 2, 1829, means the executor of the last will and testament of the deceased pensioner, or the administrator on his estate.—*Vol. 10, p. 428.*

647. Arrears due a deceased pensioner may be paid to the administrator, unless some one or more of the heirs entitled make known to the pension agent a preference that their shares should be paid without the intervention of an administrator.—*Vol. 8, p. 359.*

648. The Pension act of 19 June, 1840, was not designed to repeal the act of March 2, 1829, but it does authorize payment to an administrator, notwithstanding there

are children living. Where there are no children living the law does not apply.—*Vol. 13, p. 28.*

649. The Pension act of June 19, 1840, chapter 17, provides that the pension shall not be considered as part of the assets of the deceased pensioner's estate, nor liable to be applied to the payment of the debts of said estate; therefore the amount of pension due at the time of the death of a female pensioner may be paid to her children, or to the administrator for the sole and exclusive benefit of her children, to be distributed among them in equal shares.—*Vol. 12, p. 160.*

650. When the executor or administrator of a deceased pensioner claims payment of the balance of pension due at the time of the death of a pensioner, the certificate of the proper court to the fact of the death will be sufficient, without certifying that there are children living.

In the case of a male pensioner, it should appear by the certificate that there is no widow; as, in case of a widow surviving the deceased pensioner, she, and not the executor or administrator, is entitled to the balance.—*Vol. 14, p. 22.*

651. On the death of a pensioner having neither wife nor child, the balance of pension due at the time of his death is not payable to his half-sister, but to the executor or administrator on his estate.—*Vol. 9, p. 637.*

652. The balance of pension due a deceased pensioner at the time of his decease, is payable to the widow only, if she remain unmarried. The children have no legal claim to it, except in case of the death or intermarriage of the widow.—*Vol. 9, p. 26.*

653. A widow claiming arrears of pension due her deceased husband, must prove herself, before a court of

record, to be the widow of the deceased pensioner, and also take the oath that she is the identical person thus proved to be the widow.—*Vol. 14, p. 19.*

654. Where a widow, pensioned under the act of July 21, 1848, contracts another marriage, the agent must require her pension certificate to be surrendered, on paying her pension to the date of such intermarriage. If she has a child entitled to the reversion of the pension, application must be made, with proper proof, to the Commissioner of Pensions, for a new certificate in the name of the child.—*Vol. 13, p. 193.*

655. By the acts of March 2, 1829, and June 19, 1840, the balance due a deceased Revolutionary pensioner, leaving children, but no widow, belongs to the children, and can be paid only to them, or to the executor or administrator on the estate of the deceased pensioner for their benefit.—*Vol. 11, pp. 16, 244, 190.*

656. A widow pensioner, under the law of July 4, 1836, or July 21, 1848, is entitled to her pension up to the date of her death or intermarriage, if either occur within the five years for which the pension runs; and for the remainder of the time, if any, the pension inures to the child or children under sixteen years of age.—*Vol. 12, p. 344.*

657. On the death of a female pensioner, the balance of pension due at the time of her death is, by law, payable to her children then living.—*Vol. 10, p. 5.*

658. The share due each of the surviving children of a pensioner may be paid to his or her attorney, without the production of the original certificate, or a compliance with the regulation on page 12 of the circular of Sept. 1, 1846.—*Vol. 13, p. 25.*

659. When a pensioner, who is a widow, dies, leaving children, the amount of pension due at the time of her death belongs not to the executor or administrator, but to her surviving children, to be distributed among them in equal shares.—*Vol. 14, p. 38; Vol. 11, p. 104.*

660. Payment of arrears due a deceased pensioner, who left no widow, must always be made to surviving children, if any, and not to representatives of children who died during the lifetime of the pensioner.—*Vol. 15, p. 426.*

661. Children not being entitled to the pension, except upon the marriage of their mother, proof of her marriage and its date must be filed with their claim.—*Vol. 13, p. 341.*

662. Where a child is by law entitled to the balance of pension due a deceased parent, the receipt of the child to the pension agent is deemed sufficient, notwithstanding such child may be a feme-covert at the time of signing the receipt.—*Vol. 11, p. 65.*

663. Where one of the children named in a pension certificate dies unmarried, before the certificate is received, leaving brothers and sisters, the share of pension due him may be paid to the surviving children, without taking out letters of administration.—*Vol. 12, p. 147.*

664. Where one of two or more children named in a pension certificate cannot be found, and a certificate from the proper court is offered as a voucher by the attorney of the other children, affirming that satisfactory evidence has been produced of the death of such child, or that he has been so long absent without having been heard from as to be considered legally deceased by the laws of the State where he had lived, it will be considered sufficient proof of the right of the surviving children to draw the balance of the pension due.—*Vol. 12, pp. 134, 146.*

665. When several children are embraced in the pension certificate, the oath of indemnity is not required from all, but only from the one who may be authorized by regular power of attorney from the others to receive the pension money due.—*Vol. 12, p. 87.*

666. A grandchild of a deceased pensioner cannot, in any case, claim to receive the arrears of pension due the pensioner at the time of his death. If no widow or children survive the pensioner, payment must be made to the executor or administrator.—*Vol. 14, pp. 44, 344.*

667. At the death of the ward the powers of the guardian cease. The balance of pension, therefore, due a pensioner who was under guardianship at the time of his decease, is not payable to the guardian.—*Vol. 8, p. 65.*

668. Whenever a Navy pension has been unclaimed for two years, the application of the pensioner, and all the documents in support of his claim, must be referred to the Fourth Auditor of the Treasury for investigation.—*Vol. 8, p. 22.*

669. On the application of a guardian for the payment of a pension due his wards, he must furnish proof that they are still living, are under twenty-one years of age, and that he still continues to be their guardian.—*Vol. 8, p. 25.*

670. Where an invalid pensioner's name has been continued on the rolls, and for a series of years he has not claimed the pension at the agency by producing the required proof of continued disability, and afterwards produces that proof and claims under the original certificate, payment should be made at the Treasury. But if his name was stricken from the rolls of the agency so that he could not obtain his pension by applying there with the proper proof, and is to receive it by virtue of a new order from

the Department, he should be paid at the agency.—*Vol. 14, p. 63.*

671. The pension agent may, if he thinks proper, require the attorney to receive the money at the office of the agency, though if it were paid on receipts executed elsewhere, the voucher would not be objectionable on that account.—*Vol. 14, p. 221.*

672. The regulations for paying pensions require that the certificate shall be set out in the application, and that the applicant shall make oath that he is the identical person named in that certificate.—*Vol. 13, p. 123.*

673. In cases where there is no county court seal, the Pension agent will not reject vouchers for lack of the seal alone, but he will require the certificate of the clerk that there is no seal.—*Dec. Sec. Compt., September, 1846.*

674. A pensioner residing in Canada may execute his papers before a justice of the peace in the vicinity of his residence, if he is too feeble to cross over to the United States to have his papers authenticated.—*Vol. 14, p. 125.*

675. Where a pensioner neither signs nor makes his mark to vouchers requiring his signature, the pension agent is not authorized to pay the money.—*Vol. 12, p. 509.*

676. Pension agents may administer all the necessary oaths in the preparation of papers for the payment of pensions. By the act of 19 February, 1849, sec. 2, the deputies and clerks of pension agents have the same power as the agents to administer oaths.—*Vol. 12, p. 219.*

677. Notaries public are not considered as authorized, *ex officio*, to administer oaths in the preparation of pension papers, but if the general authority to administer oaths has been conferred upon them by the statute laws of the particular State in which they reside and are commissioned,

the oaths taken before them would be valid and of course respected by the pension agents. It should, however, be shown that such authority exists under the law of the State.—*Vol. 12, pp. 1, 83. September 9, 1847.*

678. It is required by the proviso in the first section of the act of September 16, 1850, chap. 52, that the official character of a notary shall be established by other evidence than his seal and signature. The proviso in the first section applies only to cases where the notary has certified that oaths or affirmations were taken before him, and not to certificates of acknowledgment of instruments.—*Vol. 14, p. 111.*

679. A pension agent must require that the certificates should be set out in the oath of identity.—*Vol. 13, p. 21.*

680. The omission of the words “duly authorized by law to administer oaths” from the oath of identity or acknowledgment of the power of attorney in the pension papers, is not so important as to render it necessary to reject the papers on that account.—*Vol. 11, pp. 404, 423, 437.*

681. By the act of the General Assembly of the State of Ohio, passed March 22, 1849, notaries are authorized to administer oaths in all cases where an oath is required in the execution of papers to draw pensions at the pension agencies or at the Treasury of the United States.—*Vol. 14, p. 62.*

682. That section of the pension instructions which requires a witness to pension vouchers where the pensioner or attorney of a pensioner subscribes by a mark in consequence of inability to write, applies to the oath of identity as well as to every other necessary voucher. In all cases, therefore, a witness is required, other than, and in addition to

the magistrate before whom the affidavit is made.—*Vol. 12, p. 85.*

683. A power of attorney to draw a pension must be dated and acknowledged on, or subsequent to the day on which the pension becomes due.—*Vol. 14, pp. 228, 430; Vol. 13, pp. 123, 287, 291.*

684. When interlineations and additions are made in a power of attorney to draw a pension, they must be noted by the magistrate.—*Vol. 6, p. 44.*

685. When a pensioner receives from the pension agent a greater sum than was his due, the excess should stand to his debit, and be considered as so much paid, and no further payment should be made until something shall become due, after deducting the sum so over paid.—*Vol. 8, pp. 222, 421.*

686. A power of attorney to draw a pension is not vitiated in consequence of its giving authority to draw from a time antecedent to that from which the pension is due.—*Vol. 14, p. 88.*

687. If the pension agent pay to the attorney more money than the pensioner authorized the attorney to receive, the pensioner is not legally accountable for the excess unless it be shown that he received such excess, or sanctioned the act of the attorney in so receiving it.—*Vol. 8, p. 438.*

688. Pension agents are authorized to have the forms printed and furnished to pensioners and individuals employed in the preparation of vouchers for pensioners, and their charges for the expenditure may be allowed in their accounts for contingencies.—*Dec. Sec. Compt., August 10, 1848.*

NOTE. By the act of Congress approved September 16, 1850, oaths, affirmations, and acknowledgments made before notaries public are to have the same force and effect as if taken before justices of the peace, in all cases where they may be taken before justices under the laws of the United States.















